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II.

THE
NEW PROPERTY CODE,

COMPRISING THE

PROPERTY AND CONSOLIDATION ACTS, 1922—1926,

With special reference to their effect on the law relating to the sale and purchase of land.

WITH A REVISION

OF

WILLIAMS on VENDOR AND PURCHASER
(THIRD EDITION).

BY

GEO. H. DEVONSHIRE,

OF LINCOLN'S INN, BARRISTER-AT-LAW, M.A.

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PREFACE.

THIS book was intended to serve the purposes of the "Supplementary Volume" foreshadowed in the Preface to the Third Edition of Mr. T. CYPRIAN WILLIAMS' Treatise on the Law of Vendor and Purchaser. Such a volume would naturally take the form of a commentary indicating, in regard to each Chapter of the Treatise, what alterations in the text were necessary to bring it into line with the numerous and extensive changes effected by the Acts passed on the 9th April, 1925, for amending and consolidating the Law of Property and Conveyancing, and by the Property Acts, 1922 and 1924, so far as unrepealed. At an early stage of the work the writer found that it would be impracticable to do this merely by incidental references to such changes in the course of revising the successive Chapters of the Treatise, and that the commentary must be prefaced by at least an outline of the Acts of 1922 and 1924 as still in force, and of each of the six Consolidation Acts which are of general application (*a*). What was intended to be an outline has developed into a fairly full and detailed account of each of these Acts; with a

(*a*) That is to say, the Settled Land Act, 1925; the Trustee Act, 1925; the Law of Property Act, 1925; the Land Registration Act, 1925; the Land Charges Act, 1925, and the Administration of Estates Act, 1925; in this book referred to respectively as the Settled Land Act, the Trustee Act, the Property Act, the Registration Act, the Land Charges Act, and the Administration Act. The Universities and College Estates Act, 1925, being of limited application, has not been considered in detail, but is referred to in connection with sect. 7 of Chapter X. of the Treatise.

consequent increase both in the size of the book and in the time required for its production and publication.

In the result the book is divided into Parts as follows:—

Part I.—The New Code. Introductory.
Part II.—The Property Acts, 1922 and 1924.
Part III.—The Property Act.
Part IV.—The Settled Land Act.
Part V.—The Trustee Act.
Part VI.—The Land Charges Act.
Part VII.—The Administration Act.
Part VIII.—The Registration Act.
Appendix to the Consolidation Acts.
The Law of Property (Amendment) Act, 1926.
Part IX.—Revision of the Treatise.

It is hoped that this volume may be of some service to the profession as a guide to the scope and contents of what may be described as a New Code.

The writer desires to express his obligations to Mr. J. Chapman Parry, of Gray's Inn, for his valuable assistance in undertaking the work of preparing the Index.

Attention is called to the *Errata* and *Addenda* on pages xxix, xxx and xxxi.

19, Old Buildings,
Lincoln's Inn.
December, 1926.

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Wright *v.* Leonard 728
Wright *v.* Rowbotham 706

York Glass Co. *v.* Jubb 719

ABBREVIATIONS.

Administration Act *or* A. E. Act *means* The Administration of Estates Act, 1925.

Land Charges Act *or* L. C. Act *means* The Land Charges Act, 1925.

L. P. Act, 1922, *means* The Law of Property Act, 1922.

L. P. Act, 1924, *means* The Law of Property (Amendment) Act, 1924.

Property Act *or* L. P. Act *means* The Law of Property Act, 1925.

L. P. Act, 1926, *means* The Law of Property (Amendment) Act, 1926.

Registration Act *or* L. R. Act *means* The Land Registration Act, 1925.

Settled Land Act *or* S. L. Act *means* The Settled Land Act, 1925.

Trustee Act *or* T. Act *means* The Trustee Act, 1925.

U. & C. E. Act *means* The Universities and College Estates Act, 1925.

USE OF BRACKETS.

Where, in this book, a section or sub-section of a Consolidation Act is set out, and is one which re-enacts, wholly or partially, the text or substance of a repealed enactment which was in force at the commencement of the Consolidation Act, the re-enacted matter is printed within square brackets, with a marginal reference to the repealed enactment.

ERRATA.

P. 23, line 4.—For "*Proceedings*" read "*Provisions.*"

P. 109, note (*o*).—For "Parts VII. and VII." read "Parts VII. and VIII."

P. 393, line 5.—For "1859" read "1839."

P. 398, note (*b*).—The reference in this note should be to p. 392.

P. 495, note (*d*).—For "47" read "45."

P. 498, line 4 and margin.—For "Part V." read "Part IV."

P. 524, Section vii.—For "Act of 1875" read "Act of 1897."

P. 525, note (*a*) and first marginal note.—For "ss. 101 to 125" read "ss. 101 to 109."

P. 548.—The amendment of s. 13 of the S. L. Act should have been distinguished by a marginal line.

P. 552.—In the second line of the passage to which the marginal note "Effect of enactments" refers insert "the" before "sub-section."

P. 570, note (*n*).—For "Vict." read "Geo. 5."

P. 580, line 18.—For "Summary Jurisdiction (Married Women) Act, 1925," read "Summary Jurisdiction (Separation and Maintenance) Act, 1925."

P. 649.—In the Table, for "S. L. Act" read "S. L. Act, 1882."

P. 654, last line of the text.—For "A., B. and C." read "A., C. and D."

P. 663, note (*u*).—For "S. R. & O. 1896" read "S. R. & O. 1926."

P. 688, line 1.—For "1885" read "1888."

P. 701, lines 19, 20.—For "the fee simple, or otherwise, the whole" read "the fee simple or other the whole."

P. 703, line 7.—For "conveyance or sale" read "conveyance on sale."

P. 707, line 17.—For "sect. 129 of the Supreme Court" &c. read "sect. 219 of the Supreme Court," &c.

P. 718, note (*u*).—For "p. 516" read "p. 716."

P. 723, note (*y*).—For "s. 30" read "s. 130."

P. 764, line 1.—For "the Act of 1895" read "the Act of 1875."

P. 766, line 12.—For "sects. 19 to 21" read "sects. 18 to 20."

ADDENDA.

P. 173. L. P. Act, s. 29. In *In re Lady Francis Cecil's Settlement Trusts*, (1926) W. N. 138, on the application of a person who, being entitled under a settlement on trust for sale made in 1874 to a life interest in possession in the proceeds of sale and the rents and profits until sale, had in 1923 obtained an order under sect. 7 of the Settled Land Act, 1884, authorising him to exercise the powers of a tenant for life conferred by sect. 63 of the Settled Land Act, 1863, Tomlin, J., made an order declaring that the order of 1923 was still in force, but that the powers under it must be exercised in the manner provided by sub-sect. (2) of sect. 29 of the Property Act. This was, in effect, a decision that, though a power of sale could not have been delegated under that section, sub-sect. (4) includes such a power. See the judgment of Tomlin, J., in *In re Leigh's Settled Estates*, (1926) Ch. at p. 862, where he expresses the opinion that the concluding words of sub-sect. (4) really mean "if the power had been a power capable of being delegated under this section and had been so delegated."

P. 231. Sect. 81 of the Property Act re-enacts sect. 60 of the Conveyancing Act, 1881, with the modification that, where any such covenant, contract, bond, or obligation as is mentioned in the repealed section and the re-enacting section is made after the commencement of the Property Act, it is to be construed as being made also with each of the covenantees.

Sect. 83 of the Property Act re-enacts, and extends to an "assent," sect. 64 of the Conveyancing Act, 1881.

P. 262. As to the position created after the commencement of the Settled Land Act where land has previously been sold with an indemnity against a family charge, and other land subject to the charge remains vested in the vendor, see *In re Ogle's Settled Estates*, (1926) W. N. 227.

P. 263. The words "of full age," as used throughout the Property and Settled Land Acts, mean no more than "not being an infant." Therefore, a corporation may have the powers of a tenant for life, *e.g.*, by virtue of sect. 20 (1) (ix) of the Settled Land Act, where it is beneficially entitled to land for an estate in fee simple in possession subject to a family rentcharge. So held in *In re Carnarvon (Earl's) Chesterfield and Highclere Settled Estates*, (1927) 1 Ch. 138, where, after an examination of the authorities, it was also held that land to which a person is so entitled was not "settled land" under the Settled Land Acts, 1882 to 1890. In the same case it was also held that an agreement for the sale of settled land, though it confers an equitable interest on the purchaser, cannot be one of the instruments constituting a compound settlement.

Pp. 269, 270. S. L. Act, ss. 108, 109. As to the exercise under these sections by a tenant for life of additional powers conferred by a settlement, see *In re Cowley's Settled Estates*, (1926) Ch. 725.

P. 301. S. L. Act, s. 16. As to the application of this section where an estate owner of a settled estate having a general power of appointment over the settled land requires to raise money for his own use and benefit, see *In re Egerton Settled Estates*, (1926) Ch. 574.

Attention is drawn to the important changes in the law effected respectively by the Adoption of Children Act, 1926, and the Legitimacy Act, 1926. Both these Acts came into operation on the 1st January, 1927.

SUPPLEMENT

TO

WILLIAMS

ON

VENDOR AND PURCHASER.

(THIRD EDITION.)

PART I.

The New Code—Introductory.

CHAPTER I.

THE ACT OF 1922.

Objects.

THE Law of Property Act, 1922 (*a*) (in this Part referred to as "the principal Act"), was passed on the 29th June, 1922, being, as described in its full title, "An Act to assimilate and amend the law of Real and Personal Estate, to abolish copyhold and other special tenures, to amend the law relating to commonable lands and of intestacy, and to amend the Wills Act, 1837, the Settled Land Acts, 1882 to 1890, the Conveyancing Acts, 1881 to 1911, the Trustee Act, 1893, and the Land Transfer Acts, 1875 and 1897."

Extent.

The principal Act was not to extend to Scotland or Ireland (*b*).

Commencement.

The principal Act was expressed to come into operation on the 1st January, 1925 (*c*), but by the Law of Property Act

(*a*) Stat. 12 & 13 Geo. V. c. 16.
(*b*) L. P. Act, 1922, s. 191 (3).
(*c*) Ibid. s. 191 (2).

Part I. Chap. I.

(Postponement) Act, 1924 (*d*), its operation was postponed until the 1st January, 1926.

Scope and contents.

The principal Act deals in detail and at great length with the various matters foreshadowed by its full title, and for this purpose is divided into eleven Parts and has sixteen Schedules.

As the greater part of the principal Act is repealed (*e*), and, *except as re-enacted* (*e*), will never come into operation, only those portions of it which remain unrepealed (*f*) will hereafter require consideration.

(*d*) Stat. 15 Geo. V. c. 4.
(*e*) By one or another of the Consolidation Acts hereinafter mentioned. But as to the temporary operation of some repealed enactments of the principal Act, see below, p. 54.
(*f*) See below, Part II.

CHAPTER II.

THE AMENDING ACT.

Section 1.—*Title, &c.*

The amending Act.

THE principal Act was considerably amended by the Law of Property (Amendment) Act, 1924 (*g*) (in this Part referred to as "the amending Act").

Commencement, extent.

The amending Act was to come into operation on the 1st January, 1926, and extends to England and Wales only (*h*).

Contents.

The Act itself (omitting formal parts and the Schedules) contains only twelve short sections, which are as follows:—

Repeals effected by the principal Act. 12 & 13 Geo. V. c. 16.

1. For the purpose of collecting the repeals effected by the Law of Property Act, 1922 (in this Act referred to as "the principal Act") parts of which are intended to be repealed, it is hereby declared that the enactments set out in the First Schedule to this Act are the enactments which were, to the extent specified in the third column of the said Schedule, repealed by the principal Act.

Amendments of the principal Act.

2. The principal Act shall be amended, in regard to details relating to the enfranchisement of copyholds and the conversion of perpetually renewable leaseholds into long terms, in the manner appearing in the Second Schedule to this Act.

Provisions facilitating the consolidation of the law relating to conveyancing and property.

3. The amendments and provisions, for facilitating the consolidation of the statute law relating to conveyancing and property, contained in the Third Schedule to this Act, shall have effect.

Provisions facilitating the consolidation of the law relating to settled land.

4. The amendments and provisions, for facilitating the consolidation of the statute law relating to settled land, contained in the Fourth Schedule to this Act, shall have effect.

Provisions facilitating the consolidation of the law relating to trustees.

5. The amendments and provisions, for facilitating the consolidation of the statute law relating to trustees, contained in the Fifth Schedule to this Act, shall have effect.

Provisions facilitating the consolidation of the law relating to the registration of pending actions, &c.

6. The amendments and provisions, for facilitating the consolidation of the statute law relating to the registration of pending actions, annuities, writs, orders, deeds of arrangement and land charges, contained in the Sixth Schedule to this Act, shall have effect.

(*g*) Stat. 15 Geo. V. c. 5. (*h*) L. P. Act, 1924, s. 12 (3), (4).

Part I. Chap. II.

Provisions facilitating the consolidation of the law relating to administration of estates.

7. The amendments and provisions, for facilitating the consolidation of the statute law relating to the administration of estates of deceased persons, contained in the Seventh Schedule to this Act, shall have effect.

Provisions facilitating the consolidation of the law relating to registration of title to land.

8. The amendments and provisions, for facilitating the consolidation of the statute law relating to the registration of title to land, contained in the Eighth Schedule to this Act, shall have effect.

Statutes affected by the principal Act.

9. The enactments mentioned in the Ninth Schedule to this Act are affected by the principal Act in the manner and to the extent specified in that Schedule.

Repeal of statutes rendered obsolete.

10. The enactments set out in the Tenth Schedule to this Act, being enactments which, as respects England and Wales, are rendered obsolete by the principal Act, are hereby repealed to the extent specified in the third column of that Schedule.

Provisions for facilitating the consolidation of the law relating to university and college estates.

11. The amendments and provisions for facilitating the consolidation of the statute law relating to university and college estates, contained in the Eleventh Schedule to this Act, shall have effect.

Short title, commencement, extent.

12.—(1) This Act may be cited as the Law of Property (Amendment) Act, 1924.

(2) This Act shall be construed as one with the principal Act, and that Act and this Act may be cited together as the Property Acts, 1922 and 1924.

(3) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(4) This Act extends to England and Wales only.

Section ii.—*Effect of sects.* 1 *and* 10 *of the amending Act as regards repeals.*

L. P. Act, 1924, s. 1.

The repeals effected by the principal Act, except that of the definition of "tenant" in the Copyhold Act, 1894, were effected by portions of the principal Act, all of which, at the time at which they would otherwise have come into effect, namely, the 1st January, 1926, are themselves repealed by one or another of the Consolidation Acts hereinafter mentioned.

It appears to follow that (with the above exception) the repeals contained in the principal Act can never take effect and sect. 1 of the amending Act and the First Schedule thereto may be ignored as being inoperative. It is consistent with this view that every one of the enactments (except the above definition) declared by that section to have been repealed by the

principal Act is repealed, *de novo*, by one or another of the Consolidation Acts hereinafter mentioned (*i*).

On the other hand, as neither sect. 10 of the amending Act nor the Tenth Schedule thereto is repealed, the enactments referred to in that section and set out in that Schedule were, as respects England and Wales, and to the extent specified in the third column of that Schedule, effectually repealed as soon as the amending Act came into force. [See note on p. 6.]

L. P. Act, 1924, s. 10.

Section iii.—*Enactments "affected" by the principal Act* (*j*).

The Ninth Schedule to the amending Act is as follows:—

NINTH SCHEDULE.

Section 9.

Enactments affected.	How affected on the commencement of the principal Act.
1. The Inheritance Act, 1833, as amended by section nineteen of the Law of Property Amendment Act, 1859.	1. Remains in force for the purpose (so far as applicable) of ascertaining the devolution of entailed interests as equitable interests, and of ascertaining the persons who are to take equitable interests as heirs by purchase, but in other respects ceases to apply (save in the case of a lunatic or defective provided for by the principal Act) on intestacies.
2. The Lands Clauses Acts and other statutes giving powers to make title in case of persons under disability.	2. Take effect as if the references to the disabilities which have been removed had been omitted.
3. The Wills Act, 1837.	3. Takes effect to enable equitable interests to be disposed of subject and without prejudice to the estate and powers of a personal representative.
4. The Fines and Recoveries Act, 1833, as amended.	4. Remains in force in regard to dealings with entailed interests as equitable interests.
5. The Small Dwellings Acquisition Act, 1899, and other statutes prescribing the mode of effecting mortgages of land.	5. Take effect as if the modes prescribed were by charge by way of legal mortgage or by demise or subdemise, but without prejudice to any statutory power to effect mortgages by deposit of documents.

(*i*) The writer is, however, unable to find any such repeal of the S. L. Act, 1889, or of Part I. of the L. T. Act, 1897, so far as it relates to deaths occurring after the 31st December, 1925. So far as it relates to deaths occurring before the 1st January, 1926, it was not intended to be repealed.

(*j*) See sect. 9 of the L. P. Act, 1924; above, p. 4.

Part I. Chap. II.

Enactments affected.	How affected on the commencement of the principal Act.
6. All previous statutory provisions relating to the disposition of copyhold or customary lands.	6. Become obsolete.
7. All statutory provisions requiring a remainderman or reversioner to concur in a conveyance by a tenant for life or statutory owner of settled land.	7 Are inoperative as respects the transfer or creation of a legal estate; a consent in writing by the remainderman or reversioner shall be a sufficient compliance with the statutory provision.

In so far as the enactments mentioned in the first column of the Schedule are affected by sections of the principal Act which are repealed and re-enacted by any of the Consolidation Acts hereinafter mentioned, references to the repealed sections must, by virtue of sect. 38 (*k*) of the Interpretation Act, 1889, be construed as references to the substituted enactments.

For example, the reference in para. 1 of the second column of the Schedule to the case of a lunatic or defective provided for by the principal Act, must be construed as a reference to subsect. (2) of sect. 51 of the Administration Act.

(*k*) Set out below, p. 11.

[Note.—The following enactments repealed by sect. 10 of the amending Act and the Tenth Schedule thereto, namely, 34 & 35 Hen. VIII. c. 20, and sect. 18 of the Fines and Recoveries Act, 1833, are continued permanently in force by the Expiring Laws Act, 1925 (stat. 15 & 16 Geo. V. c. 76), s. 1 (2) and First Schedule, Part II.]

CHAPTER III.

THE CONSOLIDATION ACTS.

Section 1.—*Titles* (*l*).

THE following Consolidation Acts were passed on the 9th April, 1925:—

Session and Chapter.	Full Title.	Short Title.
15 Geo. V. c. 18 ..	An Act to consolidate the enactments relating to settled land in England and Wales.	The Settled Land Act, 1925.
15 Geo. V. c. 19 ..	An Act to consolidate certain enactments relating to Trustees in England and Wales.	The Trustee Act, 1925.
15 Geo. V. c. 20 ..	An Act to consolidate the enactments relating to conveyancing and the law of property in England and Wales.	The Law of Property Act, 1925.
15 Geo. V. c. 21 ..	An Act to consolidate the Land Transfer Acts and the statute law relating to registered land.	The Land Registration Act, 1925.
15 Geo. V. c. 22 ..	An Act to consolidate the enactments relating to the registration of pending actions, annuities, writs, orders, deeds of arrangement and land charges, and to searches.	The Land Charges Act, 1925.
15 Geo. V. c. 23 ..	An Act to consolidate enactments relating to the administration of the estates of deceased persons.	The Administration of Estates Act, 1925.
15 Geo. V. c. 24 ..	An Act to consolidate the Universities and College Estates Acts, 1858 to 1898, and enactments amending those Acts.	The Universities and College Estates Act, 1925.

(*l*) For the abbreviated titles of these Acts, as used respectively in the text and in the notes and margin of this book, see "Abbreviations," above.

Part I. Chap. III.

Section ii.—*Commencement and Extent.*

The Registration Act was to come into operation on the 1st January, 1926, but was to be deemed to come into operation immediately after the Property Act, the Settled Land Act, the Land Charges Act, the Trustee Act, and the Administration Act came into operation (*m*).

The extent of the Universities and College Estates Act, 1925, is necessarily confined to the Universities and Colleges to which that Act applies (*n*).

The Trustee Act, except where otherwise expressly provided, is to extend to England and Wales only (*o*).

Except as above mentioned, each Consolidation Act was to come into operation on the 1st January, 1926, and extends to England and Wales only (*p*).

Section iii.—*The Consolidation Acts as affecting the principal and amending Acts.*

Repeal, re-enactment and consolidation of parts of the principal and amending Acts.

Each of the Consolidation Acts repeals, re-enacts and consolidates, as from its commencement, such of the provisions of the principal Act and the amending Act respectively as are *in pari materia* with the subject-matter of the consolidating Act (*q*).

(*m*) L. R. Act, s. 148 (2).

(*n*) Namely, by sect. 1, the Universities of Oxford, Cambridge, and Durham, and the colleges or halls in those Universities, and the Colleges of Saint Mary of Winchester, near Winchester, and of King Henry the Sixth at Eton, and the Cathedral or House of Christ Church in Oxford, which for the purposes of the Act is to be considered a college in the University of Oxford.

(*o*) T. Act, s. 71 (3). The "express provision" appears to be sect. 56.

(*p*) S. L. Act, s. 120; T. Act, s. 71; L. P. Act, s. 209; L. R. Act, s. 148; L. C. Act, s. 26; A. E. Act, s. 58; U. & C. E. Act, s. 45.

(*q*) S. L. Act, s. 119, and Fifth Schedule; T. Act, s. 70, and Second Schedule; L. P. Act, s. 207, and Seventh Schedule; L. R. Act, s. 147, and Schedule; L. C. Act, s. 24, and Schedule; A. E. Act, s. 56, and Part II. of Second Schedule; U. & C. E. Act, s. 44, and Second Schedule.

Combined effect of these repeals.

The combined effect of these repeals is that they leave unrepealed the following portions only of the principal Act and the amending Act respectively, namely:—

Of the principal Act—

In Part II., sect. 43 ("Power to sell in consideration of a rent-charge, and extension of sect. 13 of the Act of 1882") so far as it relates to glebes;

Part V. (sects. 128 to 137, "Abolition of copyhold and customary tenure"), and, in connection therewith, the Twelfth Schedule;

Part VI. (sects. 138 to 144, "Extinguishment of manorial incidents," except sub-sect. (10) of sect. 138 (*r*)), and, in connection therewith, the Thirteenth and Fourteenth Schedules;

In Part VII. (*s*), sect. 145, and, in connection therewith, the Fifteenth Schedule; and

Part XI.

Of the amending Act—

Sect. 1, and, in connection therewith, the First Schedule;

Sect. 2, and, in connection therewith, the Second Schedule;

Sect. 9, and, in connection therewith, the Ninth Schedule;

Sect. 10, and, in connection therewith, the Tenth Schedule; and

Sect. 12.

Scope and commencement of unrepealed portions.

These unrepealed portions deal, in the main, with the subject-matters referred to in sect. 202 of the Property Act. That section is as follows:—

Provisions as to enfranchisement of copyholds, &c.

202. For giving effect to this Act, the enfranchisement of copyhold land, and the conversion into long terms of perpetually renewable leaseholds, and of leases for lives and of leases for years terminable with life or lives or on marriage, effected by the Law of Property Act, 1922, as amended by any subsequent enactment, shall be deemed to have been effected immediately before the commencement of this Act.

(*r*) This sub-section is re-enacted by sub-sects. (7) and (11) of sect. 44 of the L. P. Act.

(*s*) This Part consists of two sections only, namely, sect. 145 ("Conversion of Perpetually Renewable Leaseholds"), and sect. 146 ("Abolition of *interesse termini* and as to Reversionary Leases"), of which the latter section is re-enacted in sect. 149 of the L. P. Act.

Part I. Chap. III.

Thus, the changes in copyhold and leasehold tenure, to take effect automatically by virtue of the principal Act as amended by the amending Act, as soon as those Acts came into operation, had already taken place, or were deemed to have taken place, when the Property Act came into operation; and that Act applies to the altered circumstances produced by those changes. For example, all copyhold land had become freehold land, capable of being held for "an estate in fee simple absolute in possession," and every converted term had become "a term of years absolute" (*t*).

Section iv.—*The Consolidation Acts, as affecting enactments previously in force.*

Repeal, re-enactment and consolidation of enactments previously in force.

Each of the Consolidation Acts also repeals, re-enacts and consolidates, with or without modification, a number of enactments *in pari materia* with the subject-matter of the consolidating Act, which were in force at the commencement of the consolidating Act and are contained in Acts of Parliament (such as the Settled Land Acts, 1882 to 1890, the Trustee Acts, 1893 and 1894, the Conveyancing Acts, 1881 to 1911, the Land Transfer Acts, 1875 and 1897, and the Land Charges Acts, 1888 and 1900), which, with some exceptions, are wholly repealed by one or another of the consolidating Acts.

Section v.—*Extent and effect of the last-mentioned repeals.*

Repeals of enactments previously in force.

In order to appreciate the precise extent and effect of the repeals of enactments previously in force, it is necessary to have regard (A.) to the repeal section and "application" section (if any) of each consolidating Act; and (B.) to the enactments excepted from repeal.

(A.) *Repeal sections and "application" sections.*

(1) S. L. Act, s. 114.

(1) The repeal section of the Settled Land Act is as follows:—

Repeals, savings, and construction.

119.—(1) The Acts mentioned in the Fifth Schedule to this Act are hereby repealed, to the extent specified in the third column of that Schedule:

(*t*) See sect. 1 (1) of the L. P. Act; below, p. 97.

Provided that, without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889:—

(*a*) Nothing in this repeal shall affect the validity or legality of any dealing in land or other transaction completed before the commencement of this Act, or any title or right acquired or appointment made before the commencement of this Act, but, subject as aforesaid, this Act shall, except where otherwise expressly provided, apply to and in respect of settlements and other instruments whether made or coming into operation before or after the commencement of this Act;

(*b*) Nothing in this repeal shall affect any rules, orders, or other instruments made under any enactment so repealed, but all such rules, orders and instruments shall continue in force as if made under the corresponding enactment in this Act;

(*c*) References in any document to any enactment repealed by this Act shall be construed as references to this Act or the corresponding enactment in this Act.

(2) References in any statute to the Settled Estates Act, 1877, and to any enactment which it replaced shall be construed as references to this Act.

(3) This Act, as respects registered land, takes effect subject to the provisions of the Land Registration Act, 1925.

It will be observed that the "application" of this Act is defined in para. (a) of the proviso in sub-sect. (1), there being no separate "application" section; and that, subject as mentioned in that paragraph, this Act will, *except where otherwise expressly provided,* apply to and in respect of settlements and other instruments, whether made or coming into operation before or after the commencement of the Act.

It follows that, in order to ascertain the application of any given section of the Act, that section must be examined to see whether it contains any "express provision" restricting its application.

Sect. 38 of the Interpretation Act, 1889, provides as follows:—

Effect of repeal in future Acts.

38.—(1.) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2.) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

Part I. Chap. III.

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed.

(2) T. Act, ss. 70, 69.

(2) The repeal section of the Trustee Act is as follows, and appears to call for no comment:—

Enactments repealed. 52 & 53 Vict. c. 63.

70. The Acts mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that, without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889:

(*a*) Nothing in this repeal shall affect any vesting order or appointment made or other thing done under any enactment so repealed, and any order or appointment so made may be revoked or varied in like manner as if it had been made under this Act;

(*b*) References in any document to any enactment repealed by this Act shall be construed as references to this Act or to the corresponding enactment in this Act.

The "application" of the Act is, however, expressly defined by sect. 69, which is as follows:—

Application of Act.

69.—(1) This Act, except where otherwise expressly provided, applies to trusts including, so far as this Act applies thereto, executorships and administratorships constituted or created either before or after the commencement of this Act.

(2) The powers conferred by this Act on trustees are in addition to the powers conferred by the instrument, if any, creating the trust, but those powers, unless otherwise stated, apply if and so far only as a contrary intention is not expressed in the instrument, if any, creating the trust, and have effect subject to the terms of that instrument.

(3) This Act does not affect the legality or validity of anything done before the commencement of this Act, except as otherwise hereinbefore expressly provided, and except that the enactments mentioned in the First Schedule to this Act shall be deemed always to have had effect subject to the provisions set forth in that Schedule.

As regards this section, it will be observed that the words "except where otherwise expressly provided" in sub-sect. (1), "unless otherwise stated" in sub-sect. (2), and "except as otherwise hereinbefore expressly provided" in sub-sect. (3), again involve a detailed examination of any particular section whenever any question arises as to its application.

(3) The repeal section of the Property Act is as follows:— (3) L. P. Act, s. 207.

207. The Acts mentioned in the Seventh Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule: Repeals as respects England and Wales.

Provided that, without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889:— 52 & 53 Vict. c. 63.

(*a*) Nothing in this repeal shall affect the validity or legality of any dealing in property or other transaction completed before the commencement of this Act, or any title or right acquired or appointment made before such commencement, but, subject as aforesaid, this Act shall, except where otherwise expressly provided, apply to and in respect of instruments whether made or coming into operation before or after such commencement:

(*b*) Nothing in this repeal shall affect any rules, orders, or other instruments made under any enactment so repealed, but all such rules, orders and instruments shall continue in force as if made under the corresponding enactment in this Act:

(*c*) References in any document to any enactment repealed by this Act shall be construed as references to this Act or to the corresponding enactment in this Act.

Here again, there being no separate "application" section, the "application" of the Act depends upon the words "subject as aforesaid" and "except where otherwise expressly provided" in para. (a) of the proviso.

(4) The repeal section of the Registration Act is as follows:— (4) L. R. Act, s. 147.

147.—(1) The Acts mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule: Repeals, savings and construction.

Provided that, without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889:— 52 & 53 Vict. c. 63.

(*a*) Nothing in this repeal shall, save as otherwise expressly provided in this Act, affect any transfer of any interest in land or entry in the register made before the commencement of this Act, or any title or right acquired or appointment made before the commencement of this Act:

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(*b*) Nothing in this repeal shall affect any rules, regulations, orders, or other instruments made under any enactment so repealed, but all such rules, regulations, orders, and instruments shall, until superseded, continue in force as if made under the corresponding provision of this Act:

(*c*) Nothing in this repeal shall affect the tenure of office or salary or right to pension or superannuation allowance of any officer appointed before the commencement of this Act:

(*d*) References in any document to any enactment repealed by this Act shall be construed as references to the corresponding provisions of this Act.

(2) References to registration under the Land Charges Act, 1925, apply to any registration made under any other statute which is by the Land Charges Act, 1925, to have effect as if the registration had been made under that Act.

What appears to be an example of an "express provision" saved by para. (a) of sub-sect. (1) of this section is afforded by the provisions of the Act relating to undivided shares registered at the commencement of the Act (*u*).

(5) L. C. Act, ss. 24, 23.

(5) The repeal section of the Land Charges Act is as follows:—

Repeals.

24. The Acts mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that, without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889:— 52 & 53 Vict. c. 63.

(*a*) Nothing in this repeal shall affect any entry in a register made under any enactment so repealed, but the registration shall have effect as if made under this Act;

(*b*) Nothing in this repeal shall affect any rules made under any enactment so repealed, but all such rules shall continue in force as if made under the corresponding enactment in this Act;

(*c*) References in any document to any enactment repealed by this Act shall be construed as references to this Act or to the corresponding enactment in this Act.

The "application" of the Act is qualified as follows by sect. 23 of the Act:—

Application to registered land.

23.—(1) As respects pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, this Act shall not apply thereto, if and so far as they affect registered

(*u*) L. R. Act, ss. 2, 78; see below, Part VIII.

land, and can be protected under the Land Registration Act, 1925, by lodging or registering a creditor's notice, restriction, caution, inhibition or other notice.

(2) Nothing in this Act imposes on the registrar any obligation to ascertain whether or not a pending action, writ, order, deed of arrangement or land charge affects registered land.

(6) The qualifications of the application of, and of the repeals effected by, the Administration Act should particularly be noticed, as their effect is that, with some exceptions, *the Act does not apply in the case of deaths occurring before the commencement of that Act, and the law in force at such commencement will continue to be in force in regard to deaths so occurring.* (6) A. E. Act, ss. 54, 56.

The relevant sections are sects. 54 and 56.

Sect. 54 is as follows:—

54. Save as otherwise expressly provided, this Act does not apply in any case where the death occurred before the commencement of this Act. Application of Act.

Sects. 4, 10 to 14, 16, and 18 to 20 of the Act are repealed and re-enacted by, and as from the commencement (*x*) of, the Supreme Court of Judicature (Consolidation) Act, 1925 (*y*).

In view of such last-mentioned repeal, the only sections of the Administration Act whereby it is "otherwise expressly provided" appear to be the following, to which the respective marginal notes are as stated:—

Sect. 6. Withdrawal of renunciation;

Sect. 8. Right of proving executors to exercise powers;

Sect. 36. Effect of assent or conveyance by personal representative;

Sect. 37. Validity of conveyance not affected by revocation of representation;

Sect. 38. Right to follow property and powers of Court in relation thereto;

Sect. 39. Powers of management;

Sect. 40. Powers of personal representative for raising money, &c.;

(*x*) The 1st January, 1926.
(*y*) Stat. 15 & 16 Geo. V. c. 49, s. 226, and Sixth Schedule, and sects. 155 and 159 to 166. See below, Part VII., Chapter I., p. 427.

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Sect. 41. Powers of personal representative as to appropriation;

Sect. 42. Power to appoint trustees of infants' property;

Sect. 43. Obligations of personal representative as to giving possession of land and powers of the Court.

Sect. 56 of the Act is as follows:—

Repeal.

56. The Acts mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule, but as respects the Acts mentioned in Part I. of that Schedule only so far as they apply to deaths occurring after the commencement of this Act.

The Second Schedule consists of two Parts, of which Part II. comprises only sect. 17 (*z*) of the Administration of Justice Act, 1920, and the portions of the principal Act and the amending Act respectively which are *in pari materia* with the subject-matter of the Administration Act.

Part I. of the same Schedule comprises a large number of enactments *in pari materia* with the same subject-matter, ranging from 13 Edw. I. (Stat. Westm. Sec.), c. 19, to sect. 130 of the Bankruptcy Act, 1914 (*zz*).

(7) U. & C. E. Act, s. 44.

(7) The repeal section of the Universities and College Estates Act, 1925, is as follows:—

Repeals.

44.—(1) The Acts mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule:

Provided that nothing in this repeal shall affect the validity of anything done before the commencement of this Act, or shall affect any consent, order, authority, or direction given under any enactment so repealed; but any such consent, order, authority, or direction shall have effect as if made under the corresponding provisions of this Act.

(2) References in any document to any enactment repealed by this Act shall be construed as references to this Act or the corresponding provisions of this Act.

Reference may also be made to sect. 41, the marginal note to which is "Land to which Act applies and mode of exercise of powers."

(*z*) This section was replaced by sect. 14 ("Grant of Representation to a Trust Corporation") of the A. E. Act. The latter section, as we have seen (above, p. 15), is repealed and re-enacted by sect. 161 of the Supreme Court of Judicature (Consolidation) Act, 1925.

(*zz*) As to the continuance in force of sect. 130 of the Bankruptcy Act, 1914, see below, p. 430.

(B.) *Enactments excepted from repeal.*

The only enactments so excepted which need be mentioned are as follows:—

(1) *As regards the Conveyancing Acts.*

By the combined operation, and as from the commencement of, the Settled Land Act (*a*), the Trustee Act (*b*), and the Property Act (*c*), the Conveyancing Acts, 1881 to 1911, are wholly repealed, *except*—

As regards the Conveyancing Act, 1881.

Sect. 30 ("Devolution of trust and mortgage estates on death"), so far as it relates to deaths occurring before the commencement of the Property Act;

Sect. 43 ("Application by trustees of income of property of infant for maintenance, &c."), so far as it relates to instruments coming into operation before such commencement;

Sect. 2; and sect. 48; and

As regards the Conveyancing Act, 1911.

Sect. 12 ("Power for proving executors to sell or transfer real estate"), so far as it relates to deaths occurring before the commencement of the Property Act.

Sect. 30 of the Conveyancing Act, 1881, is replaced by sects. 1 and 3 (i) (ii) of the Administration Act, so far as regards deaths occurring after the commencement of the latter Act.

Sect. 43 of the Conveyancing Act, 1881, is replaced by sect. 31 of the Trustee Act, so far as regards instruments coming into operation after the commencement of the latter Act.

Sect. 2 of the Conveyancing Act, 1881, is the section defining the expressions "property," "land," &c., as used in that Act,

(*a*) S. L. Act, s. 119, and Fifth Schedule.
(*b*) T. Act, s. 70, and Second Schedule.
(*c*) L. P. Act, s. 207, and Seventh Schedule.

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and is, presumably, kept alive only for the purpose of interpreting, so far as may be necessary, the other sections of the same Act which are excepted from repeal.

Sect. 48 of the Conveyancing Act, 1881, is the section giving power to deposit in the Central Office of the Supreme Court original instruments creating powers of attorney, and is "the statutory enactment in that behalf" referred to in sect. 125 ("Powers of attorney relating to land to be filed") of the Property Act.

The same sect. 48 is by, and as from the commencement (*d*) of, the Supreme Court of Judicature (Consolidation) Act, 1925, repealed (*e*) and replaced by sect. 219 of the latter Act; and the last-mentioned section will, as from such commencement, be "the statutory enactment in that behalf."

Sect. 12 of the Conveyancing Act, 1911, is, in regard to deaths occurring after the commencement of the Administration Act, replaced by sect. 2 (2) of the latter Act.

(2) *As regards the Settled Land Acts.*

By, and as from the commencement of, the Settled Land Act (*f*), the Settled Land Acts, 1882 to 1890, are wholly repealed, except (*g*) sect. 30 of the Settled Land Act, 1882, by which section the enumeration of improvements contained in sect. 9 of the Improvement of Land Act, 1864, is extended so as to comprise, subject as therein mentioned, all improvements authorised by the Settled Land Act, 1882. The section of the last-mentioned Act by which improvements are authorised is sect. 25, which is repealed by, and as from the commencement of, the Settled Land Act. It seems, therefore, that the reference to that section in sect. 30 of the Settled Land Act, 1882, must, as from such commencement, be construed as a reference to the corresponding enactment (namely sect. 83) in the Settled Land Act (*h*).

(*d*) The 1st January, 1926.
(*e*) Stat. 15 & 16 Geo. V. c. 49, s. 226, and Sixth Schedule.
(*f*) S. L. Act, s. 119, and Fifth Schedule.
(*g*) *Sed. qu.* as to the S. L. Act, 1889; see above, p. 5, note (*i*). The powers given by that Act are preserved and extended by sect. 51 of the S. L. Act.
(*h*) See Interpretation Act, 1889, s. 38; above, p. 11.

(3) *As regards the Trustee Acts.*

Of the Trustee Act, 1888, the whole, except sect. 1 ("Short title, extent and definition") and sect. 8 ("Statute of limitations may be pleaded by trustees"), was repealed by the Trustee Act, 1893 (*i*).

These two sections are *not* repealed by any of the Consolidation Acts, and are still in force.

It may be mentioned here that sect. 3 (giving jurisdiction to grant relief in certain cases of breach of trust) of the Judicial Trustees Act, 1896 (*k*), is by, and as from the commencement of, the Trustee Act, repealed (*l*) and re-enacted by sect. 61 of the latter Act.

(*i*) Stat. 56 & 57 Vict. c. 53, s. 51, and Schedule.
(*k*) Stat. 59 & 60 Vict. c. 35.
(*l*) T. Act, s. 70, and Second Schedule.

CHAPTER IV.

SUMMARY OF FOREGOING CHAPTERS.

Section 1.—*Constituents of the New Code.*

Constituents of the New Code.

FROM what precedes it appears that the constituents of the new code admit of a threefold division:—

I. The *repealed* provisions, *as re-enacted and consolidated*, of the principal Act and the amending Act respectively.

II. The *unrepealed* provisions of the same Acts, relating mainly to the enfranchisement of copyholds and the conversion of certain leasehold interests.

III. The provisions, *as repealed and re-enacted*, of various Acts of Parliament in force at the commencement of the Consolidation Acts, and *in pari materia* with the subjects with which the latter Acts respectively deal.

"New law" and "old law."

Of these divisions the first two comprise *new law*, coming into operation for the first time on the 1st January, 1926, and effecting changes, largely of a revolutionary character, in the law of real and personal property and in the system of Conveyancing, as respectively in force immediately before that date; and the third comprises law which, in so far as it is re-enacted without material alteration, is *old law* revived by the re-enacting statute, and to be construed, *primâ facie*, in accordance with cases decided on the construction of the original enactments (*m*).

A clear example of old law, so revived and to be construed, appears to be afforded by sect. 40 of the Law of Property Act, 1925, replacing sect. 4 (so far as it relates to land) of the Statute of Frauds.

(*m*) As to the construction of Consolidation Acts, see note (*l*) on p. 433 of the Treatise.

Section ii.—*Classification of the New Law.*

The new law also appears to admit of a threefold division and to effect changes of three distinct kinds:—

I. Changes affecting the substance, as distinct from the form or mode of enjoyment, of rights to property.

This kind comprises changes such as the abolition of copyhold tenure; the power to create in personal estate interests analogous to estates tail in real estate; the abolition in the case of deaths occurring after the 31st December, 1925, of the law of inheritance (except for certain purposes (*n*)), dower, curtesy and escheat; the assimilation, in cases of intestacy occurring after that date, of the devolution of real estate to that of personal estate; and the distribution of property, as to which a person, dying after that date, dies intestate, in accordance with rules applicable alike to real and personal estate and differing substantially from the rules in force under the old law.

II. Changes which, while not *destroying* beneficial interests in land, as previously subsisting, alter the mode in which they are to be enjoyed or enforced in cases where, under the new law, they constitute or become "equitable interests," as distinguished from "legal estates."

These changes result (1) from the new classification, introduced by the Law of Property Act, 1925, as from its commencement, of "legal estates" and "equitable interests," whereby "legal estates" can subsist only in the entirety of land vested in one or more person or persons of full age and, if more than one, as joint tenants and not as tenants in common, and (apart from certain analogous interests or charges in or over land, which also are to rank as "legal estates") must be either "an estate in fee simple absolute in possession" or a "term of years absolute," all other estates, interests and charges in or over land (including undivided shares in land and an interest in land belonging beneficially to an infant) taking effect, and being described, as "equitable interests"; and (2) from the provisions whereby it is intended to secure that

(*n*) See the Ninth Schedule to the L. P. Act, 1924; above, p. 5.

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the legal estate, whether settled or unsettled, and whether subject or not to incumbrances, shall always, except when vested in a personal representative, be vested in the person (if any) of full age who is for the time being beneficially entitled in possession to the entirety of the land in which the legal estate subsists, or, if and whilst there is no such person, then in the "statutory owner" or in trustees for sale.

III. Aided by and based upon such last-mentioned changes, changes in the system of conveyancing having for their object to "screen" a purchaser of a legal estate in land from notice, or from being affected by notice, of "equitable interests" in or charges on such land, and thereby to shorten and simplify the title to legal estates and to facilitate dealings therewith for value.

CHAPTER V.

TRANSITIONAL PROVISIONS.

SECT. 39 of the Property Act enacts as follows:—

Transitional Proceedings.

39. For the purpose of effecting the transition from the law existing prior to the commencement of the Law of Property Act, 1922, to the law enacted by that Act (as amended), the provisions set out in the First Schedule to this Act shall have effect— Transitional provisions in First Schedule. 12 & 13 Geo. V. c. 16.

(1) for converting existing legal estates, interests and charges not capable under the said Act of taking effect as legal interests into equitable interests;
(2) for discharging, getting in or vesting outstanding legal estates;
(3) for making provision with respect to legal estates vested in infants;
(4) for subjecting land held in undivided shares to trusts for sale;
(5) for dealing with party structures and open spaces held in common;
(6) for converting tenancies by entireties into joint tenancies;
(7) for converting existing freehold mortgages into mortgages by demise;
(8) for converting existing leasehold mortgages into mortgages by sub-demise.

Sect. 37 of the Settled Land Act enacts as follows:—

Transitional Provisions.

37. The transitional provisions set out in the Second Schedule to this Act shall have effect as regards settlements existing at the commencement of this Act. Transitional provisions with respect to existing settlements, &c.

These transitional provisions, which will be considered in the course of this book (*o*) in connection with the subjects to which they respectively relate, are of great importance and merit particular attention, because they effect changes, which take place automatically and by virtue of the Acts themselves at the moment when they come into force, in the *quality* or *vesting* of certain estates or interests in land.

(*o*) Below, Part III., Chapter I., p. 99; Chapter II.; Chapter III., Section ii.; Chapter V., Sections ii., iv. and v.; Chapter VI., p. 164; Chapter VIII., Section ii.; Part IV., Chapter IV., Section iii.

CHAPTER VI.

RETROSPECTIVE ENACTMENTS.

SECT. 118 of the Settled Land Act enacts as follows:—

Retrospective amendment of certain provisions of Settled Land Acts.

118. For the purpose of removing certain doubts as to the construction and operation of the Settled Land Acts, 1882 to 1890, and validating past transactions, the provisions contained in the Fourth Schedule to this Act shall have effect.

Subject as aforesaid, this Act does not affect the validity of anything done or any order made or directions given by the Court before the commencement of this Act.

The "Retrospective Amendments of the Settled Land Acts, 1882 to 1890," set out in the Fourth Schedule which is here referred to, should be looked at whenever any question arises as to the validity of any past transaction under the repealed Acts.

Attention must also be called to the "Retrospective Amendments" set out in the First Schedule to the Trustee Act (*p*).

(*p*) See sub-sect. (3) of sect. 69 of the T. Act; set out above, p. 12.

CHAPTER VII.

DEFINITIONS.

THERE is in each of the Consolidation Acts an "interpretation" section specifying a number of expressions which in that Act, unless the context otherwise requires, are to have the meanings thereby assigned to them respectively. The respective interpretation sections of the several Acts are as stated in the note (*a*).

In the case of three Acts, namely, the Settled Land Act, the Property Act, and the Administration Act, the interpretation section is divided into three sub-sections, the definitions being contained in sub-sect. (1).

Sub-sects. (2) and (3) of the interpretation sections of the Settled Land Act and the Property Act are in identical terms, and are as follows:—

(2) Where an equitable interest in or power over property arises by statute or operation of law, references to the "creation" of an interest or power include any interest or power so arising.

(3) References to registration under the Land Charges Act, 1925, apply to any registration made under any statute which is by the Land Charges Act, 1925, to have effect as if the registration had been made under that Act.

Sub-sects. (2) and (3) of the interpretation section of the Administration of Estates Act are as follows:—

(2) References to a child or issue living at the death of any person include a child or issue *en ventre sa mère* at the death.

(3) References to the estate of a deceased person include property over which the deceased exercises a general power of appointment (including the statutory power to dispose of entailed interests) by his will.

(*a*) S. L. Act, s. 117; T. Act, s. 68; L. P. Act, s. 205; L. R. Act, s. 3; L. C. Act, s. 20; A. E. Act, s. 55; U. & C. E. Act, s. 43.

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There are also in some of the Acts other expressions which are defined incidentally in some section other than the interpretation section.

In the following Table the unbracketed marginal reference opposite each definition is to the Act, or, where the definition is the same in two or more Acts, to the several Acts in which the definition is to be found, the reference in each case, except where otherwise stated, being to the interpretation section of the Act referred to, and to the number in that section by which the definition is distinguished; and the marginal reference (if any) in square brackets is to the corresponding definition (if any) contained in some repealed Act.

TABLE OF DEFINITIONS.

1. ADMINISTRATION.

A. E. Act (i). "Administration" means, with reference to the real and personal estate of a deceased person, letters of administration, whether general or limited, or with the will annexed or otherwise.

2. ADMINISTRATOR.

A. E. Act (ii) "Administrator" means a person to whom administration is granted.

3. ANNUITY. *See* Land Charges Act, s. 4 (5) (*b*).

4. AUTHORISED INVESTMENTS.

T. Act (1). "Authorised investments" mean investments authorised by the instrument, if any, creating the trust for the investment of money subject to the trust, or by law.

5. BANKRUPTCY.

L. P. Act (i). [C. Act, 1881, s. 2 (xv).] "Bankruptcy" includes liquidation by arrangement; also in relation to a corporation means the winding up thereof.

6. BUILDING LEASE. *See* Building Purposes.

7. BUILDING PURPOSES AND BUILDING LEASE.

S. L. Act (i). L. P. Act (iii). U. & C. E. Act (i). [S. L. Act, 1882, s. 2 (10) (iii); C. Act, 1881, s. 2 (x).] "Building purposes" include the erecting and the improving of, and the adding to, and the repairing of buildings: and a "building lease" is a lease for any building purposes or purposes connected therewith.

(*b*) Below, p. 396.

8. Capable of Subsisting as a Legal Estate; Capable of Subsisting at Law. *See* Legal Estates.

9. Capital Money.

"Capital money arising under this Act" means capital money arising under the powers and provisions of this Act or the Acts replaced by this Act, and receivable for the trusts and purposes of the settlement and includes securities representing capital money. S. L. Act (ii). [S. L. Act, 1882, s. 2 (9).]

In each of the Acts mentioned in the margin "capital money" is to have the same meaning as in the Settled Land Act. L. P. Act (xxvi).

10. Charge by way of Legal Mortgage. L. R. Act (xxvi).

A "charge by way of legal mortgage" is a legal mortgage of land created by a charge by deed expressed to be by way of legal mortgage and having the effect of a mortgage by demise or sub-demise. L. P. Act, s. 87.

"Charge by way of legal mortgage" means a mortgage created by charge under which, by virtue of the Law of Property Act, 1925, the mortgagee is to be treated as an estate owner in like manner as if a mortgage term by demise or sub-demise were vested in him. L. R. Act (1).

In each of the Acts mentioned in the margin "charge by way of legal mortgage" is to have the same meaning as in the Property Act. L. C. Act (4). A. E. Act (xxiv).

11. Committee. *See* Lunatic.

12. Contingent Right.

"Contingent right" as applied to land includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest, or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent. T. Act (2). [T. Act, 1893, s. 50.]

13. Convey. *See* Conveyance.

14. Conveyance; Convey; Disposition; Dispose of.

"Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will; "convey" has a corresponding meaning; and "disposition" includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and "dispose of" has a corresponding meaning; L. P. Act (ii). [Compare C. Act, 1881, s. 2 (v).]

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S. L. Act (v). U. & C. E. Act (ii).

"Disposition" and "conveyance" include a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will, and "dispose of" and "convey" have corresponding meanings.

T. Act (3). [T. Act, 1893, s. 50.]

"Convey" and "conveyance" as applied to any person include the execution by that person of every necessary or suitable assurance (including an assent) for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law for the validity of the conveyance.

L. C. Act (1).

"Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, release and every other assurance of property, or of an interest therein, by any instrument except a will, and "convey" has a corresponding meaning.

A. E. Act (iii).

"Conveyance" includes a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will, and "convey" has a corresponding meaning, and "disposition" includes a "conveyance" also a devise bequest and an appointment of property contained in a will, and "dispose of" has a corresponding meaning.

It will be noticed that in the Property Act and the Administration of Estates Act "conveyance" includes assurances *inter vivos* only, whereas "disposition" includes all assurances whether *inter vivos* or by will; that in the Settled Land Act and the Universities and College Estates Act "disposition" and "conveyance" are convertible terms, each including only assurances *inter vivos;* that in the Trustee Act and the Land Charges Act "conveyance" includes only assurances *inter vivos,* and there is no definition of "disposition"; and that in the Land Registration Act there is no definition whether of "conveyance" or of "disposition."

15. Court.

S. L. Act, s. 113 (1), (2), (3). [S. L. Act,

All matters within the jurisdiction of the court under this Act shall, subject to the enactments for the time being in force with respect to the procedure of the Supreme

Court of Judicature, be assigned to the Chancery Division of the High Court.

The powers of the court may, as regards land in the County Palatine of Lancaster or the County Palatine of Durham, be exercised also by the respective Courts of Chancery of those Counties Palatine. [1882, s. 2 (10), (ix), s. 46 (1), (8), (10).]

The powers of the court may, as regards land not exceeding in capital value five hundred pounds, or in annual rateable value thirty pounds, and, as regards capital money arising under this Act, and securities in which the same is invested, not exceeding in amount or value five hundred pounds, and as regards personal chattels settled or to be settled, as in this Act mentioned, not exceeding in value five hundred pounds, be exercised by any county court within the district whereof is situate any part of the land which is to be dealt with in the court, or from which the capital money to be dealt with in the court arises under this Act, or in connexion with which the personal chattels to be dealt with in the court are settled.

In this Act "the Court" means the High Court, and also the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham, or the county court, where those courts respectively have jurisdiction. T. Act, s. 67 (1), (2). [T. Act, 1893, s. 46.]

The procedure under this Act in palatine courts and county courts shall be in accordance with the Acts and rules regulating the procedure of those courts.

In this Act, unless the contrary intention appears, "the court" means the High Court, and also the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham, or the county court, where those courts respectively have jurisdiction. L. P. Act, s. 203 (3), (4). [C. Act, 1881, s. 2 (xviii), s. 69 (9).]

All matters within the jurisdiction of the High Court under this Act shall, save as otherwise expressly provided, and subject to the enactments for the time being in force with respect to the Supreme Court of Judicature, be assigned to the Chancery Division of the court. [C. Act, 1881, s. 69 (1).]

"The Court" means the High Court of Justice, and also the Court of Chancery of the County Palatine of L. R. Act (ii). L. C. Act (2).

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Lancaster or Durham, or the county court, where those courts respectively have jurisdiction.

A. E. Act (iv). "The Court" means the High Court, and also the county court, where that court has jurisdiction, and as respects the administration of estates "court" also includes the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham where those courts respectively have jurisdiction.

16. Death Duty; Death Duties.

S. L. Act (iii). L. P. Act (iv). L. R. Act (iii). "Death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on death.

L. C. Act (4). In the Act mentioned in the margin "death duty" is to have the same meaning as in the Property Act.

A. E. Act (xxiv). In the Act mentioned in the margin "death duties" is to have the same meaning as in the Settled Land Act.

17. Deed of Arrangement.

L. C. Act (3). "Deed of arrangement" has the same meaning as in the Deeds of Arrangement Act, 1914.

18. Defective. *See* Lunatic.

19. Determinable Fee.

S. L. Act (iv). "Determinable fee" means a fee determinable whether by limitation or condition.

20. Dispose of. *See* Conveyance.

21. Disposition. *See* Conveyance.

22. Dower.

S. L. Act (vi). "Dower" includes "freebench."

23. Entailed Interest.

L. P. Act, s. 130 (1). Sect. 130 (1) of the Property Act authorises the creation by way of trust of an interest in tail, or in tail male, or in tail female, or in tail special (in that Act referred to as "an entailed interest") in any property real or personal.

Sub-sect. (7) of the same section provides that in that Act where the context so admits, "entailed interest" includes an estate tail (now made to take effect as an equitable interest) created before the commencement of that Act.

S. L. Act (xxviii). "Tenant in tail" includes a person entitled to an entailed interest in any property; and "entailed interest" has the same meaning as in the Law of Property Act, 1925.

T. Act (15). A. E. Act (xxiv). In each of the Acts mentioned in the margin "entailed interest" is to have the same meaning as in the Property Act.

24. ESTATE CONTRACT.

An " estate contract " in the Property Act means a contract to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase, a right of pre-emption, or any other like right; and in the Land Charges Act " an estate contract " has a similar meaning, being defined as a contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option of purchase, a right of pre-emption, or any other like right. L. P. Act, s. 2 (3) (iv). L. C. Act, s. 10 (1), Class C (iv).

25. EQUITABLE EASEMENT. *See* Land Charges Act, s. 10 (1), Class D (iii) (*c*).

26. EQUITABLE INTERESTS. *See* Legal Estates.

27. EQUITABLE POWERS. *See* Legal Powers.

28. ESTATE OWNER. *See* Legal Estates.

29. EXECUTOR. *See* Personal Representative.

30. FINE. *See* Rent.

31. FORESTRY LEASE. *See* Lease.

32. GAZETTE.

"Gazette" means the London Gazette. T. Act (4); L. P. Act (vi); L. R. Act (v).

33. GENERAL EQUITABLE CHARGE. *See* Land Charges Act, s. 10 (1), Class C (iii) (*d*).

34. HEREDITAMENTS; HEREDITAMENT; LAND; MANOR; MANORIAL INCIDENT; MINES AND MINERALS; MINING PURPOSES; MINING LEASE.

"Hereditaments" mean real property which on an intestacy might before the commencement of this Act have devolved on an heir. S. L. Act (vii).

"Land" includes land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, and any estate or interest in land not being an undivided share in land; S. L. Act (ix). [Compare S. L. Act, 1882, s. 2 (10) (i).]

(*c*) Below, p. 412. (*d*) Below, p. 407.

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S. L. Act (xiv).

"Manor" includes lordship, and reputed manor or lordship; and "manorial incident" has the same meaning as in the Law of Property Act, 1922.

[S. L. Act, 1882, s. 2 (10) (v).]

S. L. Act (xv).

[S. L. Act, 1882, s. 2 (10) (iv).]

"Mines and minerals" mean mines and minerals whether already opened or in work or not, and include all minerals and substances in, on, or under the land, obtainable by underground or by surface working; and "mining purposes" include the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away, and disposing of mines and minerals, in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes; and a "mining lease" is a lease for any mining purposes or purposes connected therewith, and includes a grant or licence for any mining purposes.

T. Act (6).

[Compare T. Act, 1893, s. 50.]

"Land" includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings, whether the division is horizontal, vertical or made in any other way, and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land, but not an undivided share in land; and in this definition "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof; and "hereditaments" mean real property which under an intestacy occurring before the commencement of this Act might have devolved on an heir.

L. P. Act (ix).

[Compare C. Act, 1881, s. 2 (ii).]

"Land" includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "mines and minerals" include any strata or seam

of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof; and "manor" includes a lordship, and reputed manor or lordship; and "hereditament" means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir. [C. Act, 1881, s. 2 (iv).]

A "mining lease" means a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes. L. P. Act (xiv). [C. Act, 1881, s. 2 (xi).]

"Land" includes land of any tenure (including land, subject or not to manorial incidents, enfranchised under Part V. of the Law of Property Act, 1922), and mines and minerals, whether or not held with the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "hereditaments" mean real property which on an intestacy might, before the commencement of this Act, have devolved on an heir. L. R. Act (viii).

"Manorial incidents" have the same meaning as in Part V. of the Law of Property Act, 1922. L. R. Act (xiii).

"Mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof. L. R. Act (xiv).

"Land" includes land of any tenure, and mines and minerals, whether or not severed from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments, also a manor, an advowson and a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land, and "hereditament" means real property which, on an L. C. Act (6).

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intestacy occurring before the commencement of this Act, might have devolved on an heir.

U. & C. E. Act (iii), (iv), (vi) and (vii).

In the Act mentioned in the margin the respective definitions of "hereditaments," "land," "manor," "manorial incidents," "mines and minerals," "mining purposes," "mining lease" are substantially the same as those in the Settled Land Act.

A. E. Act (xxiv).

In the Act mentioned in the margin "land" is to have the same meaning as in the Settled Land Act.

It will be seen that the several above definitions of "hereditaments" (or its equivalent "hereditament"), "land," "manor," "manorial incident" "mines and minerals," "mining purposes," and "mining lease" are substantially the same; for though the only definition of "land," which expressly includes enfranchised land, is that contained in the Land Registration Act, there seems no reason to doubt that "land," as used in each of the other Acts, equally includes enfranchised land.

35. Income. *See* Possession.

36. Incumbrance.

L. P. Act (vii). [C. Act, 1881, s. 2 (vii).]

"Incumbrance" includes a legal or equitable mortgage and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and "incumbrancer" has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof.

37. Instrument.

S. L. Act (viii); L. P. Act (viii); L. R. Act (vii). T. Act (5). [T. Act, 1893, s. 50.]

"Instrument" does not include a statute unless the statute creates a settlement.

"Instrument" includes Act of Parliament.

38. Intestate.

A. E. Act (vi).

"Intestate" includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate.

39. Judgment.

L. C. Act (5).

"Judgment" includes any order, rule or decree having the effect of a judgment.

[L. C. Act, 1888, s. 4.]

In the Land Charges Act, 1888, judgment "does not include an order made by a Court having jurisdiction in bankruptcy in the exercise of that jurisdiction, but, save as aforesaid, includes any order or decree having the effect of a judgment." But, as we shall see (*e*), under the

(*e*) Below, Part VI.

Land Charges Act, a petition in bankruptcy, filed after the commencement of that Act, may be registered in the register of pending actions, and any receiving order in bankruptcy made after the commencement of that Act may be registered in the register of writs and orders, whether or not it is known to affect land.

40. Land. *See* Hereditaments.

41. Land Charge (*f*); Local Land Charge (*g*).

"Land charge" and "Local land charge" have the same meanings as in the Land Charges Act, 1925. L. R. Act (ix).

"Land charge" means a land charge of every class and includes a local land charge. L. C. Act (7).

42. Land Registrar. *See* Registered Land.

43. Lease; Forestry Lease; Lessor; Lessee.

"Lease" includes an agreement for a lease, and "forestry lease" means a lease to the Forestry Commissioners for any purpose for which they are authorised to acquire land by the Forestry Act, 1919. S. L. Act (x).

"Lessor" includes an underlessor and a person deriving title under a lessor or underlessor; and "lessee" includes an underlessee and a person deriving title under a lessee or underlessee; and "lease" includes an underlease or other tenancy. L. P. Act (xxiii).

"Lease" includes an underlease and any tenancy or agreement for a lease, underlease or tenancy. L. R. Act (x). U. & C. E. Act (v).

44. Legal Estates; Equitable Interests; Capable of subsisting at law; Capable of subsisting as a legal estate; Estate Owner.

"Legal estate" means an estate interest or charge in or over land (subsisting or created at law) which is by statute authorised to subsist or to be created at law; and "equitable interests" mean all other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting at law" means such an equitable interest as could validly subsist at law, if clothed with the legal estate; and "estate owner" means the owner of a legal estate. S. L. Act (xi).

(*f*) See L. C. Act, Part VI.; below, p. 401.
(*g*) See L. C. Act, Part VI.; below, p. 418.

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L. P. Act (x). "Legal estates" mean the estates, interests and charges, in or over land (subsisting or created at law) which are by this Act authorised to subsist or to be created as legal estates; "equitable interests" mean all the other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting as a legal estate" means such as could validly subsist or be created as a legal estate under this Act.

L. P. Act (v). "Estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner.

L. R. Act (xi). "Legal estates" mean the estates interests and charges in or over land subsisting or created at law which are by the Law of Property Act, 1925, authorised to subsist or to be created at law; and "equitable interests" mean all the other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting at law" means such as could validly subsist at law if clothed with the legal estate.

L. C. Act (iv). "Estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner.

A. E. Act (vii). "Legal estates" mean the estates charges and interests in or over land (subsisting or created at law) which are by statute authorised to subsist or to be created at law; and "equitable interests" mean all other interests and charges in or over land or in the proceeds of sale thereof.

L. C. Act (4). In the Act mentioned in the margin "estate owner," "legal estate," and "equitable interest" are to have the same meanings as in the Property Act.

45. Legal Mortgage; Legal Mortgagee; Mortgage; Mortgage Money; Mortgagor; Mortgagee; Mortgagee in Possession; Right of Redemption.

S. L. Act (xi). "Legal mortgage" means a mortgage by demise or sub-demise or a charge by way of legal mortgage, and "legal mortgagee" has a corresponding meaning.

T. Act (7). [T. Act, 1893, s. 50.] "Mortgage" and "mortgagee" include a charge or chargee by way of legal mortgage, and relate to every estate and interest regarded in equity as merely a security for money, and every person deriving title under the original mortgagee.

"Mortgage" includes any charge or lien on any property for securing money or money's worth; "legal mortgage" means a mortgage by demise or sub-demise or a charge by way of legal mortgage and "legal mortgagee" has a corresponding meaning; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate interest or right in the mortgaged property; "mortgagee" includes a chargee by way of legal mortgage and any person from time to time deriving title under the original mortgagee; and "mortgagee in possession" is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property; and "right of redemption" includes an option to repurchase only if the option in effect creates a right of redemption. L. P. Act (xvi). [C. Act, 1881, s. 2 (vi).]

In the Act mentioned in the margin "legal mortgage" is to have the same meaning as in the Property Act. L. R. Act (i).

In the Act mentioned in the margin "legal mortgage" is to have the same meaning as in the Settled Land Act. A. E. Act (xxiv).

46. Legal Mortgagee. *See* Legal Mortgage.

47. Legal Powers; Equitable Powers.

"Legal powers" include the powers vested in a chargee by way of legal mortgage or in an estate owner under which a legal estate can be transferred or created; and "equitable powers" mean all the powers in or over land under which equitable interests or powers only can be transferred or created. L. P. Act (xi).

48. Lessee. *See* Lease.

49. Lessor. *See* Lease.

50. Limitation; Trust; Trustee; New Trustee.

"Limitation" includes a trust, and "trust" includes an implied or constructive trust. S. L. Act (xii).

"Trust" does not include the duties incident to an estate conveyed by way of mortgage, but with this exception the expressions "trust" and "trustee" extend to implied and constructive trusts, and to cases where the T. Act (17). [T. Act, 1893, s. 50.]

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trustee has a beneficial interest in the trust property, and to the duties incident to the office of a personal representative, and "trustee" where the context admits, includes a personal representative, and "new trustee" includes an additional trustee.

L. P. Act (xii).

"Limitation" includes a trust.

51. Limitation Acts.

L. P. Act (xii).

"Limitation Acts" mean the Real Property Limitation Acts, 1833, 1837 and 1874.

L. R. Act (xii).

"Limitation Acts" mean the Real Property Limitation Acts, 1833, 1837 and 1874, and any Acts amending those Acts.

52. Limited Owner's Charge. *See* Land Charges Act, s. 10 (1), Class C (iii) (*h*).

53. Local Land Charge. *See* Land Charge.

54. Lunatic; Committee; Defective.

S. L. Act (xiii); L. P. Act (xiii); A. E. Act (viii).

"Lunatic" includes a lunatic whether so found or not, and, in relation to a lunatic not so found, "committee" includes a person on whom the powers of a committee are conferred under section one of the Lunacy Act, 1908; "defective" includes every person affected by the provisions of section one hundred and sixteen of the Lunacy Act, 1890, as extended by section sixty-four of the Mental Deficiency Act, 1913, and for whose benefit a receiver has been appointed.

T. Act (15).

In the Act mentioned in the margin "lunatic" and "defective" are to have the same meanings as in the Settled Land Act.

L. R. Act (xxvi).

In the Act mentioned in the margin "committee," "lunatic" and "defective" are to have the same meanings as in the Settled Land Act.

55. Manor. *See* Hereditaments.

56. Manorial Incident. *See* Hereditaments.

57. Mines and Minerals. *See* Hereditaments.

58. Mining Lease. *See* Hereditaments.

59. Mining Purposes. *See* Hereditaments.

(*h*) Below, p. 407.

60. MINISTER.

"Minister" means the Minister of Agriculture and Fisheries.

S. L. Act (xvi); L. P. Act (xv); U. & C. E. Act (viii).

61. MINOR INTERESTS.

"Minor interests" mean the interests not capable of being disposed of or created by registered dispositions and capable of being overridden (whether or not a purchaser has notice thereof) by the proprietors unless protected as provided by this Act, and all rights and interests which are not registered or protected on the register and are not overriding interests, and include—

L. R. Act (xv).

(a) in the case of land held on trust for sale, all interests and powers which are under the Law of Property Act, 1925, capable of being overridden by the trustees for sale, whether or not such interests and powers are so protected; and

(b) in the case of settled land, all interests and powers which are under the Settled Land Act, 1925, and the Law of Property Act, 1925, or either of them, capable of being overridden by the tenant for life or statutory owner, whether or not such interests and powers are so protected as aforesaid.

62. MORTGAGE. *See* Legal Mortgage.

63. MORTGAGE MONEY. *See* Legal Mortgage.

64. MORTGAGEE. *See* Legal Mortgage.

65. MORTGAGEE IN POSSESSION. *See* Legal Mortgage.

66. MORTGAGOR. *See* Legal Mortgage.

67. NEW TRUSTEE. *See* Limitation.

68. NOTICE.

"Notice" includes constructive notice.

S. L. Act (xvii); L. P. Act (xvii).

69. OVERRIDING INTERESTS.

"Overriding interests" mean all the incumbrances, interests, rights, and powers not entered on the register but subject to which registered dispositions are by this Act to take effect, and in regard to land registered at the

L. R. Act (xvi).

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commencement of this Act include the matters which are by any enactment repealed by this Act declared not to be incumbrances.

T. Act (8). 70. Pay; Payment; Payment into Court.

[T. Act, 1893, s. 50.] "Pay" and "payment" as applied in relation to stocks and securities and in connexion with the expression "into court" include the deposit or transfer of the same in or into court.

71. Payment. *See* Pay; Rent.

72. Payment into Court. *See* Pay.

73. Pecuniary Legacy.

A. E. Act (ix). "Pecuniary legacy" includes an annuity, a general legacy, a demonstrative legacy so far as it is not discharged out of the designated property, and any other general direction by a testator for the payment of money, including all death duties free from which any devise, bequest, or payment is made to take effect.

74. Personal Chattels.

A. E. Act (x). "Personal chattels" mean carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money.

75. Personal Representative; Executor.

S. L. Act (xviii). "Personal representative" means the executor, original or by representation, or administrator, for the time being of a deceased person, and where there are special personal representatives for the purposes of settled land means those personal representatives.

T. Act (9). "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person.

"Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court; L. P. Act (xviii).

"Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court; and where there are special personal representatives for the purposes of any settled land, it means, in relation to that land, those representatives. L. R. Act (xvii).

"Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court, and "executor" includes a person deemed to be appointed executor as respects settled land. A. E. Act (xi).

76. Possessed. *See* Possession.

77. Possession; Income; Possessed.

"Possession" includes receipt of rents and profits or the right to receive the same, if any; and "income" includes rent and profits. S. L. Act (xix). [S. L. Act, 1882, s. 2 (10) (i).]

"Possession" includes receipt of rents and profits or the right to receive the same, if any; "income" includes rents and profits; and "possessed" applies to receipt of income of and to any vested estate less than a life interest in possession or in expectancy in any land. L. P. Act (xix). [C. A. 1881, s. 2 (iii).] T. Act (10). [T. Act, 1893, s. 50.]

"Income" includes rents and profits. L. R. Act (vi); A. E. Act (v).

"Possession" includes receipt of rents and profits or the right to receive the same, if any. L. R. Act (xviii); A. E. Act (12).

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78. Power to Postpone a Sale. *See* Trust for Sale.

79. Prescribed.

L. R. Act (xix). "Prescribed" means prescribed by general rules made in pursuance of this Act.

L. C. Act (9). "Prescibed" means prescribed by rules made pursuant to this Act.

A. E. Act (xiii). "Prescribed" means prescribed by rules of court or by probate rules made pursuant to this Act.

80. Principal Vesting Instrument. *See* Vesting Deed.

81. Probate.

A. E. Act (xiv). "Probate" means the probate of a will.

82. Probate Judge.

A. E. Act (xv). "Probate judge" means the President of the Probate, Divorce and Admiralty Division of the High Court.

83. Probate Rules.

A. E. Act (xvi). "Probate rules" mean rules and orders made by the Probate Judge for regulating the procedure and practice of the High Court in regard to non-contentious or common form probate business.

84. Property.

S. L. Act (xx); L. P. Act (xx); A. E. Act (xvii). [C. Act, 1881, s. 2 (1).] "Property" includes any thing in action, and any interest in real or personal property.

T. Act (11). [T. Act, 1893, s. 50.] "Property" includes real and personal property, and any estate share and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not.

85. Proprietor.

L. R. Act (xx). "Proprietor" means the registered proprietor for the time being of an estate in land or of a charge.

86. Puisne Mortgage. *See* Land Charges Act, s. 10 (1), Class C (i) (*i*).

87. Purchase. *See* Purchaser.

(*i*) Below, p. 407.

88. Purchaser; Purchase; Valuable Consideration.

"Purchaser" means a purchaser in good faith for value, and includes a lessee, mortgagee or other person who in good faith acquires an interest in settled land for value; and in reference to a legal estate includes a chargee by way of legal mortgagee. S. L. Act (xxi).

"Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property except that in Part I. of this Act and elsewhere where so expressly provided "purchaser" only means a person who acquires an interest in or charge on property for money or money's worth; and in reference to a legal estate includes a chargee by way of legal mortgage; and where the context so requires "purchaser" includes an intending purchaser; "purchase" has a meaning corresponding with that of "purchaser"; and "valuable consideration" includes marriage but does not include a nominal consideration in money. L. P. Act (xxi). [C. Act, 1881, s. 2 (viii).]

"Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee, or other person who for valuable consideration acquires any interest in land or in any charge on land. L. R. Act (xxi).

"Valuable consideration" includes marriage, but does not include a nominal consideration in money. L. R. Act (xxxi).

"Purchaser" means any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land; and "purchase" has a corresponding meaning. L. C. Act (8).

"Purchaser" means a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration, also an intending purchaser and "valuable consideration" includes marriage, but does not include a nominal consideration in money. A. E. Act (xviii).

89. Real Estate.

"Real estate" save as provided in Part IV. of this Act means real estate, including chattels real, which by virtue of Part I. of this Act devolves on the personal representative of a deceased person. A. E. Act (xix).

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90. Real and Personal Estate.

A. E. Act s. 52.

In Part IV. of the Administration of Estates Act, "real and personal estate" has the meaning assigned to it by sect. 52 of that Act, and "real estate" appears to be used in its strict sense as excluding chattels real.

91. Registered Charge. *See* Registered Estate.

92. Registered Dispositions.

L. R. Act (xxii).

"Registered dispositions" mean dispositions which take effect under the powers conferred on the proprietor by way of transfer, charge, lease or otherwise and to which (when required to be registered) special effect or priority is given by this Act on registration.

93. Registered Estate; Registered Charge.

L. R. Act (xxiii).

"Registered estate," in reference to land, means the legal estate, or other registered interest, if any, as respects which a person is for the time being registered as proprietor, but does not include a registered charge and a "registered charge" includes a mortgage or incumbrance registered as a charge under this Act.

94. Registered Land; Land Registrar; Registrar; Registry.

L. R. Act (xxiv).

"Registered land" means land or any estate or interest in land the title to which is registered under this Act or any enactment replaced by this Act, and includes any easement, right, privilege, or benefit which is appurtenant or appendant thereto, and any mines and minerals within or under the same and held therewith.

L. P. Act (xxii).

"Registered land" has the same meaning as in the Land Registration Act, 1925, and "Land Registrar" means the Chief Land Registrar under that Act.

L. C. Act (10).

"Registrar" means the Chief Land Registrar; "registry" means His Majesty's Land Registry; and "registered land" has the same meaning as in the Land Registration Act, 1925.

95. Registrar. *See* Registered Land.

96. Registry. *See* Registered Land.

97. Rent; Payment; Fine; Rentcharge.

S. L. Act (xxii).

"Rent" includes yearly or other rent, and toll, duty, royalty,

or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, "payment" includes delivery; and "fine" includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium, or fore-gift. [S. L. Act, 1882, s. 2 (10) (ii).] U. & C. E. Act (ix).

"Rent" includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest; "rentcharge" includes a fee farm rent; "fine" includes a premium or fore-gift and any payment, consideration, or benefit in the nature of a fine, premium or fore-gift. L. P. Act (xviii). [C. Act, 1881, s. 2 (ix).]

"Rent" includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment, in money or money's worth, issuing out of or charged upon land, but does not include mortgage interest. L. R. Act (xxv).

"Rent" includes a rent service or a rentcharge, or other rent, toll, duty, or annual or periodical payment in money or money's worth, issuing out of or charged upon land, but does not include mortgage interest; and "rentcharge" includes a fee farm rent. A. E. Act (xxi).

98. Rentcharge. *See* Rent.

99. Representation.

"Representation" means the probate of a will and administration, and the expression "taking out representation" refers to the obtaining of the probate of a will or of the grant of administration. A. E. Act (xx).

100. Restrictive Covenant. *See* Land Charges Act, s. 10 (1), Class D (ii) (*k*).

"Restrictive covenant" includes the conditions, stipulations and restrictions which the Commissioners of Works may, under any statutory power, impose on enfranchised land, after the commencement of this Act, for the protection of the amenities of royal parks, gardens, and palaces. L. C. Act (11).

The power referred to in this definition is conferred by sect. 137 of the Property Act, 1922 (*l*).

(*k*) Below, p. 412.

(*l*) Below, p. 70.

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101. Right of Redemption. *See* Legal Mortgage.

102. Rights.

T. Act (12). [T. Act, 1893, s. 50.] "Rights" include estates and interests.

103. Rules of Court.

A. E. Act (xxii). "Rules of Court" include, in relation to non-contentious or common form probate business, probate rules.

104. Sale.

L. P. Act (xxiv). [C. Act, 1881, s. 2 (viii).] "Sale" includes an extinguishment of manorial incidents, but in other respects means a sale properly so called.

T. Act (3). "Sale" includes an exchange.

105. Securities; Securities Payable to Bearer.

S. L. Act (xxiii); [S. L. Act, 1882, s. 2 (10) (viii).] "Securities" include stocks, funds, and shares.

L. P. Act (xxv). [C. Act, 1881, s. 2 (xiv).] A. E. Act (xxiii). "Securities" include stocks, funds, and shares; and so far as relates to payments into court has the same meaning as in the enactments relating to funds in the Supreme Court and "securities payable to bearer" includes securities transferable by delivery or by delivery and endorsement.

T. Act (13). [T. Act, 1893, s. 50.]

106. Settled Land.

S. L. Act, s. 2. [S. L. Act, 1882, s. 2 (3).] "Land which is or is deemed to be the subject of a settlement is for the purposes of this Act settled land, and is in relation to the settlement referred to in this Act as the settled land."

S. L. Act (xxiv). "Settled land" includes land which is deemed to be settled land.

T. Act (15). L. P. Act (xxvi). L. R. Act (xxvi). A. E. Act (xxiv). In each of the Acts mentioned in the margin "settled land" is to have the same meaning as in the Settled Land Act.

107. Settlement; Subsisting Settlement.

S. L. Act, s. 1. "What constitutes a settlement" is defined by sect. 1 of the Settled Land Act (*m*).

S. L. Act (xxiv). "Settlement" includes an instrument or instruments which under this Act or the Acts which it replaces is or are deemed to be or which together constitute a settlement, and a settlement which is deemed to have been made by any person or to be subsisting for the purposes of this Act; "a settlement subsisting at the commencement of this Act" includes a settlement created by

(*m*) Below, p. 258.

virtue of this Act immediately on the commencement thereof.

In each of the Acts mentioned in the margin "settlement" is to have the same meaning as in the Settled Land Act.

T. Act (15). L. P. Act (xxvi). L. R. Act (xxvi). L. C. Act (13). A. E. Act (xxiv). S. L. Act (xxv).

108. Small Dwellings.

"Small dwellings" mean dwelling-houses of a rateable value not exceeding one hundred pounds per annum.

109. Statutory Owner.

"Statutory owner" means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under this Act, but does not include the trustees of the settlement, where by virtue of an order of the court or otherwise the trustees have power to convey the settled land in the name of the tenant for life.

S. L. Act (xxvi).

In each of the Acts mentioned in the margin "statutory owner" is to have the same meaning as in the Settled Land Act.

This definition is discussed hereafter (*n*).

T. Act (15). L. P. Act (xxvi). L. R. Act (xxvi). L. C. Act (13). A. E. Act (xxiv).

110. Statutory Trusts.

In the Settled Land and Property Acts land held upon "the statutory trusts" is to be held upon the trusts and subject to the provisions specified respectively in sub-sect. (6) of sect. 36 of the Settled Land Act. and sect. 35 of the Property Act. As will be seen, the trusts and provisions so specified are substantially the same.

Sub-sect. (6) of sect. 36 of the Settled Land Act is as follows:—

For the purposes of this section land held upon the statutory trusts shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same, with power to postpone the sale of the whole or any part thereof, and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale, after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the rights of the persons interested in the settled land.

S. L. Act, s. 36 (6).

(*n*) Below, p. 253.

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Sect. 35 of the Property Act is as follows:—

L. P. Act, s. 35.

Meaning of the statutory trusts.

For the purposes of this Act land held upon the "statutory trusts" shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land.

A. E. Act, ss. 46, 47.

In the Administration Act the expression "statutory trusts" means the trusts upon which, where under Part IV. of that Act the residuary estate of an intestate, or any part thereof, is directed to be held upon the statutory trusts for the issue of the intestate, or for any class of relatives of the intestate, other than issue of the intestate, the same is to be held.

111. Steward.

S. L. Act (xxvii). [S. L. Act, 1882, s. 2 (10) (vi).]

"Steward" includes deputy steward, or other proper officer, of a manor.

112. Stock.

T. Act (14). [T. Act, 1893, s. 50.]

"Stock" includes fully paid up shares, and so far as relates to vesting orders made by the court under this Act, includes any fund, annuity, or security transferable in books kept by any company or society, or by instrument of transfer either alone or accompanied by other formalities, and any share or interest therein.

113. Subsidiary Vesting Deed. *See* Vesting Deed.

114. Subsisting Settlement. *See* Settlement.

115. Taking out Representation. *See* Representation.

116. Tenant for Life.

S. L. Act, s. 19 (1).

"The person of full age who is for the time being beneficially entitled under a settlement to possession of settled land for his life is for the purposes of this Act the tenant for life of that land and the tenant for life under that settlement."

"Tenant for life" includes a person (not being a statutory owner) who has the powers of a tenant for life under this Act, and also (where the context requires) one of two or more persons who together constitute the tenant for life, or have the powers of a tenant for life. S. L. Act (xxviii).

The several persons who have the powers of a tenant for life under the Settled Land Act are defined in sect. 20 of that Act. S. L. Act, s. 20.

In each of the Acts mentioned in the margin "tenant for life" is to have the same meaning as in the Settled Land Act. T. Act (15). L. P. Act (xxvi). L. R. Act (xxvi). L. C. Act (13). A. E. Act (xxiv).

117. Tenant in Tail. *See* Entailed Interest.

118. Term of Years Absolute.

A "term of years absolute" means a term of years, taking effect either in possession or in reversion, with or without impeachment for waste, whether at a rent or not and whether subject or not to another legal estate, and whether certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest), but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of this Act, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by statute to take effect within that period; and in this definition the expression "term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year. S. L. Act (xxix). U. & C. E. Act (x).

"Term of years absolute" means a term of years (taking effect either in possession or reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest); but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of this L. P. Act (xxvii).

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Act, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by this Act to take effect within that period; and in this definition the expression "term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year.

L. R. Act (vii).

A "term of years absolute" means a term of years, whether at a rent or not, taking effect either in possession or in reversion, with or without impeachment for waste, subject or not to another legal estate and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest), but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of this Act, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by the Law of Property Act, 1925, to take effect within that period; and in this definition the expression "term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year.

It will be seen that the above three definitions of a "term of years absolute," though differing slightly in their language, are substantially identical, and may, for all practical purposes, be treated as one and the same. The definition is discussed hereafter (*o*).

T. Act (15). A. E. Act (xxiv).

In each of the Acts mentioned in the margin "term of years absolute" is to have the same meaning as in the Settled Land Act.

119. The Three Ridings.

L. C. Act (12).

"The three ridings" has the same meaning as in the Yorkshire Registries Act, 1884.

120. Transfer.

T. Act (16). [T. Act, 1893, s. 50].

"Transfer," in relation to stock or securities, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee.

(*o*) Below, p. 101.

121. Treasury Solicitor.

"Treasury Solicitor" means the solicitor for the affairs of His Majesty's Treasury, and includes the solicitor for the affairs of the Duchy of Lancaster. A. E Act (xxv).

122. Trust. *See* Limitation.

123. Trust Corporation.

"Trust corporation" means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under subsection (3) of section four of the Public Trustee Act, 1906, to act as custodian trustee. S. L. Act (xxx); T. Act (18); L. P. Act (xxviii); A E. Act (xxvi).

124. Trustee. *See* Limitation.

125. Trust for Sale; Trustees for Sale; Power to Postpone a Sale.

"Trust for sale," in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale; "trustees for sale" mean the persons (including a personal representative) holding land on trust for sale. T. Act (19).

"Trust for sale," in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; "trustees for sale" mean the persons (including a personal representative) holding land on trust for sale; and "power to postpone a sale" means power to postpone in the exercise of a discretion. L. P. Act (xxix).

"Trust for sale," in relation to land," means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale. L. R. Act (xxviii).

"Trustees for sale" mean the persons (including a personal representative) holding land on trust for sale. L. R. Act (xxix).

"Trust for sale," in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; and A. E. Act (xxvii).

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"power to postpone a sale" means power to postpone in the exercise of a discretion.

S. L. Act (xxx).

In the Act mentioned in the margin "trust for sale," "trustees for sale," and "power to postpone a sale" are to have the same meanings as in the Property Act.

126. Trust Instrument. *See* Vesting Deed.

127. Trustees for Sale. *See* Trust for Sale.

128. Trustees of the Settlement.

S. L. Act, s. 30.

Who are "trustees of the settlement" or "trustees of a settlement" is defined by sect. 30 of the S. L. Act (*p*).

S. L. Act (xxiv).

"Trustees of the settlement" mean the trustees thereof for the purposes of this Act howsoever appointed or constituted.

T. Act (15). L. P. Act (xxvi). L. R. Act (xxvi).

In each of the Acts mentioned in the margin "trustees of the settlement" is to have the same meaning as in the Settled Land Act.

A. E. Act (xxiv).

129. United Kingdom.

S. L. Act (xxvii); T. Act (20); L. P. Act (xxx); L. R. Act (xxx).

"United Kingdom" means Great Britain and Northern Ireland.

130. Valuable Consideration. *See* Purchaser.

131. Vesting Assent. *See* Vesting Deed.

132. Vesting Deed; Vesting Order; Vesting Assent; Vesting Instrument; Principal Vesting Instrument; Trust Instrument; Subsidiary Vesting Deed.

S. L. Act (xxxi).

In relation to settled land "vesting deed" or "vesting order" means the instrument whereby settled land is conveyed to or vested or declared to be vested in a tenant for life or statutory owner; "vesting assent" means the instrument whereby a personal representative, after the death of a tenant for life or statutory owner, or the survivor of two or more tenants for life or statutory owners, vests settled land in a person entitled as tenant for life or statutory owner; "vesting instrument" means a vesting deed, a vesting assent or, where the land affected remains settled land, a vesting order; "principal vesting instrument" includes any vesting instrument other than a subsidiary vesting deed; and

(*p*) Below, p. 268.

"trust instrument" means the instrument whereby the trusts of the settled land are declared, and includes any two or more such instruments and a settlement or instrument which is deemed to be a trust instrument.

In the Settled Land Act "vesting deed" and "trust instrument" denote primarily the two deeds by which every settlement of a legal estate in land *inter vivos* made after the commencement of that Act must be effected (*q*); and "principal vesting deed" means any vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement (*r*). S. L. Act, s. 4. S. L. Act, s. 5.

"Vesting order" means an order made under sect. 12 of the Settled Land Act (*s*). S. L. Act, s. 12.

"Vesting assent" is defined in sect. 8 of the same Act (*t*). S. L. Act, s. 8.

"Subsidiary vesting deed" is defined in sect. 10 of the same Act (*u*). S. L. Act, s. 10.

As to what settlements or instruments are to be deemed to be "trust instruments," see sect. 9 of the same Act (*x*). S. L. Act, s. 9.

In the Act mentioned in the margin "trust instrument" and "vesting instrument" are to have the same meanings as in the Settled Land Act. T. Act (15).

In the Act mentioned in the margin "vesting deed," "subsidiary vesting deed," "vesting order," and "trust instrument" are to have the same meanings as in the Settled Land Act. L. P. Act (xxvi).

In the Act mentioned in the margin "trust instrument," "vesting deed," "vesting order," "vesting assent," and "vesting instrument" are to have the same meanings as in the Settled Land Act. L. R. Act (xxvi).

In the Act mentioned in the margin "vesting instrument" is to have the same meaning as in the Settled Land Act. L. C. Act (13).

133. Vesting Instrument. *See* Vesting Deed.

134. Vesting Order. *See* Vesting Deed.

135. Will.

"Will" includes codicil. S. L. Act (xxxiii); L. P. Act (xxx); L. R. Act (xxxii); A. E. Act (xxviii). [C. Act, 1881, s. 2 (xii).] L. C. Act (4).

In the Act last mentioned in the margin "will" is to have the same meaning as in the Property Act.

(*q*) Below, p. 277.
(*r*) Below, p. 277.
(*s*) Below, p. 300.
(*t*) Below, p. 286.
(*u*) Below, p. 295.
(*x*) Below, p. 281.

PART II.

The Property Acts, 1922 and 1924.

CHAPTER I.

INTRODUCTORY.

How far unrepealed. Collective short title.

We have already seen (*a*) what portions remain unrepealed of the Law of Property Act, 1922, and the Law of Property (Amendment) Act, 1924, which "may be cited together as the Property Acts, 1922 and 1924" (*b*), and are hereinafter called respectively "the principal Act" or "the Act" and "the amending Act"; and that, so far as unrepealed, they came into operation on the 1st January, 1926 (*c*); except that, as we have also seen (*d*), the enfranchisement of copyhold land, and the conversion into long terms of perpetually renewable leaseholds and of leases for lives and of leases for years determinable with life or lives or on marriage, effected by the principal Act, as amended by any subsequent enactment, are to be deemed to have been effected immediately before the commencement of the Property Act.

Commencement.

Operation of s. 202 of the L. P. Act.

The effect of the enactment last referred to appears to be that, for a brief moment of time, all such portions of the principal and amending Acts respectively as, by reference or otherwise, are necessary to "effect" the enfranchisement and conversion respectively, or to define the terms and conditions of such enfranchisement and conversion respectively, will have come into force, albeit repealed a moment later by the Property Act or by some other Consolidation Act coming into force contemporaneously with the Property Act.

(*a*) Above, p. 9.
(*b*) L. P. Act, 1924, s. 12 (2).
(*c*) Above, pp. 2, 3.
(*d*) L. P. Act, s. 202; above, p. 9.

For example, the provisions of the Twelfth Schedule to the principal Act, which Schedule, as amended, states the "effect" which the enfranchisement by virtue of Part V. of the principal Act is to have (*e*), are in some cases expressly enacted subject or by reference to some Part of the principal Act which is repealed by one or another of the Consolidation Acts.

In such cases it is necessary to ascertain (1) what are the repealed enactments referred to, a process which is not easy where the reference is to Part I. of the principal Act, seeing that Part I. of that Act comprises thirty-four sections and incorporates nine Schedules; and (2) what are the enactments, contained in one or another of the Consolidation Acts, which, by virtue of sect. 38 of the Interpretation Act, 1889 (*f*), must be substituted for the repealed enactments.

Construction of amending Act.

The amending Act is to be construed as one with the principal Act (*g*).

L. P. Act, 1924, ss. 1, 9 and 10 and relative Schedules.

The portions remaining unrepealed of the amending Act include sects. 1, 9 and 10, which, with the Schedules referred to in those sections respectively, have already been considered (*h*).

L. P. Act, 1922, ss. 188-190.

The unrepealed portions of the principal Act include sects. 188, 189 and 190, which contain respectively "General definitions," "Special definitions applicable to Part V.," and "Special definitions applicable to Part VII."

(*e*) L. P. Act, 1922, s. 128 (2); below, p. 62.
(*f*) Above, p. 11.
(*g*) L. P. Act, 1924, s. 12 (2).
(*h*) Above, pp. 4, 5.

CHAPTER II.

ABOLITION OF COPYHOLDS.

Section i.—*Relevant enactments.*

THE abolition of copyholds is effected by Part V. of the principal Act and the Twelfth Schedule thereto, as amended by sect. 2 of the amending Act and para. 4 (1), (2) of the Second Schedule thereto.

Section ii.—*Definitions.*

L. P. Act, 1922, s. 189.

Sect. 189 of the principal Act is as follows:—

Special definitions applicable to Part V.

189. In this Act, and in particular in Part V., unless the context otherwise requires,—

"Copyhold land" includes—

(a) Land commonly known as customary land or customary freehold land where the freehold is in the lord and not in the customary tenant; and

(b) Land of copyhold tenure held for life or lives or for years, whether or not determinable with life, where the tenant has by custom a perpetual right of renewal, subject or not to the fulfilment of any conditions;

(c) Land held in free tenure for life or lives or for years, whether or not determinable with life (but subject to custom) where the tenant has by custom a perpetual right of renewal, subject or not to the fulfilment of any conditions;

"Copyholder in fee" means the person who is admitted in respect of the inheritance;

"Tenant" means the person in whom the enfranchised land is vested by virtue of this Act, and includes the persons deriving title under him;

"Prescribed" means prescribed by regulations made by the Minister;

Other expressions have the same meaning in Part V. of this Act as in the Copyhold Act, 1894, but without prejudice, where applicable, to the general definitions in this Act.

Copyhold land.

It will be seen that "copyhold land" does not include customary freeholds where the freehold is in the tenant. Such customary freeholds (properly called "ancient freeholds" (*a*)) constitute "land held in free tenure but subject to custom" within the meaning of sub-sect. (3) of sect. 128 of the principal Act (*b*). Land so held is not "enfranchised land," but the "manorial incidents" attached thereto are subject to the provisions of Part VI. of the principal Act. Nor does "copyhold land" include copyhold land held under a grant by the lord as copyhold for a life or lives or for years where the tenant has not, at the commencement of the principal Act, a right of perpetual renewal. The case of copyhold land so held is dealt with separately by sect. 133 of the principal Act (*c*).

"Copyholder in fee."

"Copyholder in fee" obviously means the person who, by virtue of having been admitted, is, at the commencement of the Act, the legal owner of a copyhold tenement in customary fee simple, as distinguished from a person who, at such commencement, has only "the best right to be admitted as copyholder in fee" (*d*).

"Tenant."

"Tenant" means the person in whom the enfranchised land is vested by virtue of the Act. Somewhat elaborate provisions for ascertaining who is such person are contained in para. (8) of the Twelfth Schedule to the principal Act, as amended by the Second Schedule to the amending Act (*e*).

Copyhold Act, 1894, s. 94.

"Interpretation."

The expressions which in Part V. of the principal Act are to have the same meanings as in the Copyhold Act, 1894, appear to be the following:—

The expressions "admittance" and "enrolment" include every licence of any assurance, and every ceremony, act, and assent whereby the tenancy or holding of a tenant is perfected, and the expressions "admit" and "enrol" have corresponding meanings:

The expression "ecclesiastical corporation" means an ecclesiastical corporation within the meaning of the Episcopal and Capitular Estates Act, 1851, and the Acts amending the same:

The expression "heriot" includes a money payment in lieu of a heriot:

(*a*) See Scriven on Copyholds, 7th ed., pp. 18, 19.
(*b*) Below, p. 63.
(*c*) Below, p. 68.
(*d*) Below, p. 71.
(*e*) Below, p. 70.

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The expression "lord" means a lord of a manor whether seised for life or in tail or in fee simple and whether having power to sell the manor or not, or the person for the time being filling the character of or acting as lord whether lawfully entitled or not, and includes all ecclesiastical lords seised in right of the church or otherwise, and lords farmers holding under them, and bodies corporate or collegiate:

The expression "manor" includes a reputed manor:

The expression "rent" includes reliefs and services (not being services at the lord's court), and every payment or tender in money, produce, kind, or labour due or payable in respect of any land held of or parcel of a manor:

The expression "steward" includes a deputy steward and a clerk of a manor and any person for the time being filling the character of or acting as steward whether lawfully entitled or not.

The definition of "tenant" in sect. 94 of the Copyhold Act, 1894, is repealed by the principal Act (*f*).

L. P. Act, 1922, s. 188.

General definitions and jurisdiction of the Court.

Sect. 188 of the principal Act is as follows:—

188. In this Act unless a contrary intention appears—

(1) "Land" includes land of any tenure, and mines and minerals, buildings, or parts (whether the division is horizontal, vertical or otherwise) of buildings and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same but not an undivided share thereof;

(2) "Registered land" means land registered under the Land Transfer Acts;

(3) "Possession" includes receipt of rents and profits or the right to receive the same, if any; and "income" includes rents and profits;

(4) "Will" includes codicil;

(5) "Rent" includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment, in money, or money's worth, issuing out of or charged upon land, but does not include mortgage interest;

(6) "Court" means the High Court of Justice, and also the Court of Chancery of the County Palatine of Lancaster or Durham, or the county court, where those courts respectively have jurisdiction; and all matters within the jurisdiction of the High

(*f*) Above, p. 4.

Court under this Act shall, subject to the Acts regulating the court, be assigned to the Chancery Division of the court; and every application to the court under this Act shall, except where it is otherwise expressed and subject to any rules of court to the contrary, be by summons at chambers, and the court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges and expenses of all or any of the parties to any application;

(7) "Property" includes any thing in action, and any interest in real or personal property, and "notice" includes constructive notice;

(8) In reference to any estate, right, or interest the "person able to dispose thereof on a sale" means the person (including a mortgagee whose power of sale has arisen) who is able on a sale to convey the same to a purchaser free from incumbrances and includes the other persons (if any) whose concurrence or consent, for the purpose of giving a receipt for the purchase money or conveying any estate or interest or consenting to the sale, is necessary for the completion of the sale;

(9) "The Land Transfer Acts" means the Land Transfer Acts, 1875 and 1897, and includes any Act consolidating or amending the same, including this Act; and "Land Registrar" means the registrar under those Acts;

(10) "Gazette" means the London Gazette;

(11) "The Limitation Acts" mean the Real Property Limitation Acts, 1833, 1837, and 1874; and the "Statutes of Distribution" mean sections five, six, and seven of chapter ten of the Act passed in the twenty-second and twenty-third years of the reign of King Charles the Second (the Statute of Distribution), sections five and seven of chapter seventeen of the Act passed in the first year of the reign of King James the Second, and the Executors Act, 1830;

(12) A "term of years absolute" means a term of years (taking effect either in possession or in reversion, but if created after the commencement of this Act then taking effect in possession within twenty-one years after the creation thereof where so required by this Act) with or without impeachment for waste, subject or not to another legal estate and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest), but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest; and in this definition the expression "term of years" includes a term for less than a year, or for a year or years, and a fraction of a year or from year to year;

(13) "Legal estates" mean the estates and interests in land (subsisting or created at law) which are by this Act authorised

to subsist or to be created at law; "equitable interests" mean all the other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting at law" means such as could validly subsist or be created as a legal estate under this Act; references to an equitable interest or power being protected by a settlement include every case where, by reason of the subsistence of an equitable interest or power, the land remains settled land or is deemed to be settled land; and "estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner;

(14) "Legal powers" mean the powers vested in a chargee by way of legal mortgage or in an estate owner under which a legal estate can be transferred or created; and "equitable powers" mean all the powers (under which equitable interests or powers only can be transferred or created) in or over land which are not legal powers;

(15) "Instrument" does not include a statute, unless the statute creates a settlement;

(16) "Conveyance" includes a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will, and "convey" has a corresponding meaning;

(17) "Disposition" includes a "conveyance" also a devise bequest and an appointment of property contained in a will which are to take effect in equity only, and "dispose of" has a corresponding meaning;

(18) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court;

(19) A "defective" includes every person affected by the provisions of section one hundred and sixteen of the Lunacy Act, 1890, as extended by section sixty-four of the Mental Deficiency Act, 1913, and for whose benefit a receiver has been appointed;

(20) "Death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on any death which occurs after the commencement of this Act.

(21) "Tenant for life of full age" includes a person of full age beneficially interested in the settled land, who has the powers of a tenant for life under the Settled Land Acts;

(22) "Statutory owner" means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life of full age, have the powers of a tenant for life under the Settled Land Acts, but does

not include the trustees of the settlement, where by virtue of an order of the court or otherwise the trustees have power to convey the settled land in the name of the tenant for life of full age;

(23) "Settled land" has the same meaning as in the Settled Land Acts, and where the settlement consists of more than one instrument, or where any estate, interest, power or charge is by this Act made to take effect as if limited or protected by the settlement, it includes every estate or interest comprised in such compound settlement;

(24) "Settlement" has the same meaning as in the Settled Land Acts, and includes an instrument which under the Settled Land Acts is deemed to be a settlement, and a settlement which is deemed to have been made by any person or to be subsisting for the purposes of those Acts; and where any such compound settlement as aforesaid exists it includes that settlement; but it only includes a vesting instrument for giving effect thereto where the context so requires;

(25) "The trustees of the settlement" has the same meaning as in the Settled Land Acts, and where any such compound settlement exists it includes the trustees of that settlement;

(26) "The Settled Land Acts" means the Settled Land Acts, 1882 to 1890, and any Act consolidating or amending the same, including this Act;

(27) "Purchaser" means a purchaser in good faith for money or money's worth, and includes a lessee, mortgagee or other person who in good faith acquires an interest in property for money or money's worth; and in reference to a legal estate includes a chargee by way of legal mortgage;

(28) "Mortgagor," "mortgagee," and "mortgage deed" have the same meanings as in the Conveyancing Act, 1881, "mortgage" includes "mortgage deed"; "charge by way of legal mortgage" means a mortgage created by charge under which, by virtue of this Act, the mortgagee is to be treated as an estate owner in like manner as if a mortgage term by demise or subdemise were vested in him; and "right of redemption" includes an option to re-purchase only if the option in effect creates a right of redemption; and "mortgagee" includes a chargee by way of legal mortgage;

(29) In relation to settled land, "vesting deed" or "vesting order" means the instrument whereby the land is conveyed or vested; "vesting assent" means the instrument whereby a personal representative, after the death of a tenant for life of full age or other sole surviving statutory owner, vests the land in the successor in title or other person entitled; "vesting instrument" means a vesting deed, assent or order; and "trust deed" means the instrument or instruments whereby the trusts of the settled land are declared;

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(30) "Trust for sale," in relation to land, means an immediate binding trust for sale, with or without a power at discretion to postpone the sale; "trustees for sale" mean the persons (including a personal representative) holding land on trust for sale; and "full power to postpone a sale" means power to postpone in the exercise of a discretion; and "trust corporation" means the public trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under subsection (3) of section four of the Public Trustee Act, 1906, to act as custodian trustee.

(31) "Minister" means the Minister of Agriculture and Fisheries;

(32) References to a child or issue living at the death of any person include a child or issue *en ventre sa mère* at the death.

This section is stated in full for purposes of reference.

Where the expressions defined are the same, the definitions in this section, if for references to repealed enactments there be substituted references to the enactments which take their place, do not differ materially from those in the Property and Settled Land Acts. The definition of "person able to dispose thereof on a sale" is peculiar to this section, and is required for the purposes of Part VI. of the Act.

Section iii.—*Enfranchisement.*

Relevant enactments.

L. P. Act, 1922, s. 128. "Enfranchisement of copyholds."

Sect. 128 of the principal Act is to the following effect:—

Sub-s. (1). Enfranchisement.

Sub-sect. (1).—As from the commencement of the principal Act every parcel of copyhold land will by virtue of that Act be enfranchised and cease to be of copyhold or customary tenure, and land so enfranchised is in that Act referred to as "enfranchised land."

"Enfranchised land."

Sub-sect. (2).—Such enfranchisement is to have the effect stated in the Twelfth Schedule to the principal Act.

Sub-s. (2). Effect of enfranchisement.

Saving of "manorial incidents."

Sub-sect. (2).—The following "manorial incidents" are saved by this section:—

(a) quit rents and chief rents and other similar rents or payments;

(b) fines, reliefs, heriots, and dues (including fees payable to stewards);

(c) forfeitures, other than forfeitures for the conveyance or attempted conveyance of an estate of freehold in the land, and for alienation without licence whether by sale, lease, mortgage or otherwise;

(d) rights as to timber;

and accordingly (subject to the provisions of the principal Act) the

enfranchised land and the persons for the time being entitled thereto are, until the manorial incidents so saved are extinguished, to remain subject thereto in like manner as if the land had not been enfranchised, but so that in lieu of any chattel liable to be seised as a heriot a sum equal to the value thereof shall be payable.

Heriots to be satisfied by money payments.

Sub-sect. (3).—Modes of assurance by special custom are abolished; and all land (including land held in free tenure but subject to custom) is to be dealt with as land held in free and common socage discharged from custom.

Sub-s. (3). Abolition of customary assurances.

Sect. 129 of the principal Act (*g*) is to the following effect:—

L. P. Act, 1922, s. 129. "Endorsement of assurances of enfranchised land by stewards."

Sub-sect. (1).—So long as any of the manorial incidents saved by section 129 remain unextinguished as respects any enfranchised land, an assurance of that land, or of any interest therein, will become void so far as regards the grant or conveyance of a legal estate, unless the assurance is produced to the steward of the manor before the expiration of six months from the date of its execution, or of such extended time as the Court may either before or after the expiration of those six months for any special reasons allow.

Sub-s. (1). Avoidance of legal operation of certain assurances of enfranchised land.

It will be noticed that the assurance is avoided only as regards its operation on the "legal estate"; and it is thought that an assurance so avoided will, at any rate if for valuable consideration, confer on the grantee an equitable interest corresponding to the legal estate assured to him. In such a case the grantee's only remedy appears to be to obtain from the Court an extension of time, and to comply with the requirements of the sub-section before the expiration of the extended time.

Effect of sub-s. (1).

Sub-sect. (2).—On production to him within the time allowed for the purpose of such an assurance, and on payment of any fines, reliefs or heriots payable in respect of the transaction, the arrears (if any) in respect of any former transaction affecting the same land, and all quit or other rents, and of the prescribed fee, the steward is forthwith to return the assurance and endorse the same with a certificate in the prescribed form and manner denoting that the assurance has been so produced; and, if he fails to do so or refuses to accept a proper tender of the fines, reliefs, heriots, rents and fee, he is to be liable to indemnify any person who suffers or incurs any damage or expense in consequence of such failure or refusal; Provided that, if any dispute arises as to the amount payable in respect of fines, reliefs, heriots, rents or fees, the amount demanded is to be paid or tendered, without prejudice to the right to recover any part not properly payable.

Sub-s. (2). Certificate by steward.

(*g*) This section does not apply to dealings with interests not affected by manorial incidents: see sub-sect. (11).

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Sub-s. (3). Effect of certificate.

Sub-sect. (3).—Such a certificate as aforesaid duly endorsed on an instrument is to be conclusive evidence that the instrument was produced to the steward within the time allowed, and a certificate on an instrument purporting to be such a certificate as aforesaid is to be taken to have been duly endorsed thereon by the steward of the manor, unless the contrary is proved.

Sub-s. (4). Substitution of the Land Registrar for the steward in certain cases.

By sub-sect. (4) the Lord Chancellor is empowered in certain cases, namely, in effect, where there is no steward or the steward is unwilling or unable to perform the duties imposed on him by this section, and after notice to the steward, if any, and to the lord (who is to have power to remove the steward and appoint another person in his place), and in default of such appointment, to make an order transferring those duties to the Land Registrar, with the consequences stated in the sub-section.

Sub-s. (5). As to registered land.

By sub-sect. (5) the previous sub-sections are not to apply where the land has been registered under the Land Transfer Acts, 1875 and 1897, and the assurance is one which is capable of being registered under those Acts; with a proviso that the Land Registrar is not to register any transfer of any such land, or any other transaction in relation to the land, or enter notice of any such other transaction, until he has ascertained that all fines, reliefs, heriots and fees payable in respect of the transaction and rents have been paid, or that no fines, reliefs, heriots, rents or fees are payable.

"Land Transfer Acts, 1875 and 1897."

These Acts (except Part I. of the Act of 1897, which Part does not relate to the registration of land) are repealed by and as from the commencement (*h*) of the Registration Act.

In the principal Act the expression "the Land Transfer Acts" means the Land Transfer Acts, 1875 and 1897, and includes any Act consolidating or amending the same, including the principal Act; and "Land Registrar" means the registrar under those Acts (*i*).

As the expression used in this sub-section is "the Land Transfer Acts, 1875 and 1897," it may be that those Acts alone are meant, and not any Act amending or consolidating the same. If so, the reference must be to land registered under the repealed Acts, and it is difficult to see to what land it can

(*h*) Above, p. 8. (*i*) L. P. Act, 1922, s. 188 (9).

apply, because neither copyhold land, strictly so called, nor customary freehold, in any case in which an admission or any act by the lord was necessary to perfect the title of a purchaser from the customary tenant, could be registered under the repealed Acts (*k*).

On the other hand, "land" in the Registration Act expressly includes land, subject or not to manorial incidents, enfranchised under Part V. of the principal Act (*l*), and, undoubtedly, such land may be registered, while still subject to manorial incidents, which (until extinguished) will be an "overriding interest" within the meaning of sect. 70 of the Registration Act. It may be, therefore, that, by virtue of sect. 38 of the Interpretation Act, 1889 (*m*), the reference in this sub-section to the Land Transfer Acts, 1875 and 1897, must, as from the commencement of the Registration Act, be construed as a reference to that Act.

Sub-s. (6). Procedure where sub-s. (5) applies.

Sub-sect. (6) contains provisions for enabling the Land Registrar, in any case under sub-sect. (5), to ascertain whether fines, reliefs, heriots, rents and fees have been paid.

Sub-s. (7). Obligations of lord.

By sub-sect. (7), until the lord appoints a steward, he is, for the purposes of this section, to be subject to the same obligations as if he were the steward.

It is thought that, under this sub-section, where there is no steward or none willing and able to act and the lord does not appoint a new steward, the lord must discharge the obligations of the steward; and that, if he should refuse or neglect to do so, an order could be made under sub-sect. (4) for transfer to the Land Registrar of the duties of the steward.

Sub-s. (8). Transfer of Court rolls, &c.

By sub-sect. (8), where the duties of the steward under this section are transferred to the Land Registrar, the lord is to cause any prescribed stamp (*n*) used for the purpose of endorsing certificates on assurances under this section to be trans-

(*k*) L. T. Act, 1875, s. 2.
(*l*) Above, p. 33. (*m*) Above, p. 11.
(*n*) The certificate or stamp to be used is prescribed by the Enfranchised Land (Certificate of Endorsement) Regulations, 1925 (S. R. & O. 1925, No. 811).

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ferred to the Land Registrar, together with the court rolls, and the Land Registrar is to hold the court rolls as agent for the lord for safe custody.

Sub-s. (9). Definition of "assurance."

Sub-sect. (9) provides that, for the purposes of that section, the expression "assurance" does not include a will or a grant or assignment of a lease or tenancy for a year or less or from year to year, but does include an assent by a personal representative, and an order of a Court of competent jurisdiction or other competent authority and a vesting declaration, operating to vest land or any interest therein in any person; and where an assurance by a personal representative is produced for indorsement, the probate of the will, or the letters of administration, shall also be produced by the personal representative at the cost of the person requiring the production.

"Vesting declaration."

By virtue of the provisions of the Twelfth Schedule to the principal Act, where, at the commencement of that Act, the copyhold land is settled land, the freehold estate in fee simple in the enfranchised land will vest in the tenant for life of full age or statutory owner (*o*). Notwithstanding such vesting, a vesting deed declaring the settled land to be vested in the tenant for life or statutory owner must be executed (*p*). Such a vesting deed will, no doubt, be a "vesting declaration" within the meaning of this sub-section; but, inasmuch as it will not operate to vest land or any interest in land in any person, it will not, it is thought, be an "assurance" which must be produced to the steward.

Sub-s. (10). Procedure in certain manors.

Sub-sect. (10) provides for the sending by registered letter or for delivering to the steward of an attested copy of the assurance in certain cases, instead of producing to him the original.

Sect. 130. "Provisions as to fines and heriots."

Sect. 130 of the principal Act enacts by sub-sects (1) to (4) what fines and heriots are to be payable until the manorial incidents saved by the principal Act have been extinguished; and by sub-sect. (5) provides that fines and heriots (whether payable before or after the commencement of the principal Act) shall be recoverable as simple contract debts and not otherwise,

(*o*) Below, p. 72. (*p*) Below, p. 290.

and shall not be recoverable (in the case of fines and heriots becoming payable after such commencement) after the expiration of six years from the date when they become payable, or (in the case of fines and heriots payable at the commencement of the principal Act) after the expiration of six years from such commencement.

L. P. Act, 1922, s. 131. "Provisions as to fees."

Sect. 131 of the principal Act contains provisions as to the fees payable, in respect of transactions effected after the commencement of the principal Act, to the steward of a manor or to the Land Registrar in respect of the performance of any duty transferred to him from the steward, and provides that the section shall apply to fees payable in respect of land liable to any heriot, quit rent, free rent, or other manorial incident whatsoever, as well as to fees payable in respect of enfranchised land.

Sect. 132. "Provisions as to forfeitures."

Sect. 132 of the principal Act contains provisions as to enforcing any right of forfeiture "saved" by Part V. of the principal Act.

Forfeitures "saved."

The forfeitures so saved are "forfeitures other than forfeitures for the conveyance or attempted conveyance of an estate of freehold in the land, and for alienation without licence, whether by sale, lease, mortgage, or otherwise" (*q*).

Sub-ss. (1) and (2). How forfeitures are to be enforced.

By sub-sects. (1) and (2) any right of forfeiture so saved is, until such right is extinguished, to be enforceable by action to recover possession, as if the freehold had remained in the lord and not otherwise, and as if all preliminary proceedings required by custom had been taken; but the like protection is given to the tenant, by requiring the lord to serve a notice specifying the particular act or neglect complained of, and by enabling the Court to grant relief, as is given by sub-sects. (1) and (2) of sect. 14 of the Conveyancing Act, 1881 (*r*), to a lessee where the lessor is seeking to enforce a right of re-entry or forfeiture under a lease.

Protection of tenant.

(*q*) Above, p. 62.

(*r*) Repealed and re-enacted by sects. 146 (1) and (2) of the L. P. Act.

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Sub-s. (3). "Who is tenant."

By sub-sect. (3), for the purposes of this section "tenant" includes any person in possession of the land or the rents and profits thereof.

Sub-s. (4). Notice how served.

By sub-sect. (4) the provisions of sect. 67 of the Conveyancing Act, 1881 (*s*), are to apply to any notice required or authorised to be served under this section.

L. P. Act, 1922, s. 133.

Sect. 133 of the principal Act provides as follows:—

Application to copyholds for life or years without right of perpetual renewal.

133.—(1) The foregoing provisions of this Part of this Act shall not apply to any copyhold land held under a grant by the lord as copyhold for a life or lives or for years where the tenant has not, at the commencement of this Act, a right of perpetual renewal, but in such case the copyhold interest of the tenant shall (save as hereinafter provided) as from the commencement of this Act be converted into a leasehold interest for the life or lives, or for years determinable on the dropping of a life, or for a corresponding legal term of years absolute, as the case may be, and the estate of the lord shall be the fee-simple or freehold reversion immediately expectant on the interest so created, and the benefit of the rents, services, and conditions subject to which the copyhold interest was held shall be incident and annexed to the reversion, and the burden of the covenants or agreements expressed or implied on the part of the lord and the tenant respectively shall run with the reversion and the land respectively; and the lord shall be entitled to a right of re-entry exercisable after thirty days default in payment of rent or on non-performance or breach of any services, covenants, agreements, or conditions, which ought to be paid, observed, or performed by the tenant, but subject (where applicable) to the provisions of section fourteen of the Conveyancing Act, 1881, as amended by any subsequent enactment.

(2) Every interest by this section vested in the tenant shall (subject to the provisions of Part I. of this Act) be subject to the same trusts, powers, executory limitations over, rights and equities, and to the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the copyhold interest affected by this section would have been subject to if it had not been so affected.

(3) Every such interest which, but for this subsection, would have taken effect as an interest for life or lives or determinable on the cesser of a life shall, in accordance with Part VII. of this Act, take effect for a term of ninety years determinable by notice as therein mentioned.

(*s*) Repealed and re-enacted by sect. 196 of the L. P. Act.

For the reference in sub-sect. (1) of this section to the provisions of sect. 14 of the Conveyancing Act, 1881, must be substituted a reference to sect. 146 of the Property Act, whereby the former section, as amended by sects. 2, 4 and 5 of the Conveyancing Act, 1892, is, with some amendments, re-enacted.

For the reference in sub-sect. (2) of this section to the provisions of Part I. of the principal Act must be substituted a reference to the corresponding provisions of the Property Act. It is thought that the provisions referred to are mainly those relating to the new classification of "legal estates" and "equitable interests," and to the modes in which the latter are to be enjoyed, protected and enforced.

In connection with this section must be read sub-sect. (6) of sect. 149 of the Property Act (*t*).

L. P. Act, 1922, s. 134. "Application to Crown and Duchy Lands."

Sect. 134 extends Part V. of the principal Act to manors or lands vested in His Majesty in right of the Crown, or of the Duchy of Lancaster, or in right of the Duchy of Cornwall or the possessions thereof, or in the Duke of Cornwall for the time being, for any estate, whether in possession, reversion, or remainder, and specifies what authorities shall, for the purposes of the principal Act, be entitled to act in the name and on behalf of the lord or tenant or estate owner, as the case may require.

L. P. Act, 1922, s. 135. Application to perpetually renewable copyholds.

Sect. 135 of the principal Act provides as follows:—

135. Where copyhold land is held for life or lives or for years, whether or not determinable with life, and the tenant has at the commencement of this Act, a perpetual right of renewal, subject or not to the fulfilment of any conditions, then, this Part of this Act shall apply as if the person who at the commencement of this Act was the admitted tenant or had the best right to be admitted in respect of such renewable interest, had been admitted, or (as the case may be) had the best right to be admitted, in respect of the inheritance; save that if the last admitted tenant died before the commencement of this Act his personal representatives shall be deemed to have had the best right to be admitted (but without prejudice to the beneficial rights of his devisee, legatee, statutory next of kin, or other persons claiming under his will or on his intestacy) and the land so enfranchised shall vest in accordance with the provisions of the Twelfth Schedule to this Act.

(*t*) Below, p. 95.

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L. P. Act, s. 136. "Saving of Grand and Petty Sergeanty services."

By sect. 136 of the principal Act the services incident to Grand and Petty Sergeanty (*u*) (which are not to be deemed manorial incidents) are saved, but the land affected is to be subject to the provisions of the principal Act in like manner as if, before the commencement of that Act, it had been held in free and common socage or had been copyhold land, as the case may require.

L. P. Act, 1922, s. 137. "Provisions for the protection of Royal Parks and Gardens."

Sect. 137 of the principal Act contains certain provisions (as regards the Manors of Hampton Court and Richmond and every or any other manor vested, at the commencement of the principal Act, in His Majesty in right of the Crown or of the Duchy of Lancaster, and lands adjoining or separated only by a road or boundary wall from any royal park or garden) for the protection of the amenities of royal parks, gardens and palaces.

By such provisions the Commissioners of Works are empowered (amongst other things), by deed enrolled on the court rolls of the manor and registered as a land charge, to impose certain restrictions, for the protection of such amenities, upon any enfranchised land adjoining any such boundary wall or the site thereof; and such registration, while maintained, will operate as notice of the restrictions to any person having or acquiring an interest in the land.

Section iv.—*Effect of Enfranchisement.*

Relevant enactments.

As we have seen (*x*), enfranchisement by virtue of Part V. of the principal Act is to have the effect stated in the Twelfth Schedule to that Act.

That Schedule consists of eight paragraphs, whereof para. (8) must be read as amended by sub-paras. (1) and (2) of para. 4 of the Second Schedule to the amending Act.

Vesting of freehold on enfranchise-

Para. (8), as so amended, contains provisions for ascertaining in whom, "on the enfranchisement of any land by virtue

(*u*) As to these services, see Wms. Real Prop. 50, 53, 23rd ed.; Pollock and Maitland's History of English Law, 2nd ed., vol. 1, pp. 282—290.

(*x*) Above, p. 62.

of this Act," the freehold estate in fee simple is to vest, or, in other words, who is to be the "tenant" within the definition (*y*).

ment, L. P. Act, 1922, Twelfth Schedule, para. (8); L. P. Act, 1924, Second Schedule, para. 4 (1), (2).

These provisions are, obviously, of importance as affecting the title to enfranchised land, and are to the following effect:—

(a) If there is a copyholder in fee (*not being a mortgagee*), the freehold estate in fee simple will (subject as provided in this Schedule (*z*)) vest in him.

(b) If there is no copyholder in fee, the freehold estate in fee simple will (subject as provided in this Schedule (*z*)) vest in the person who, immediately before the commencement of the Act, had the best right to be admitted as copyholder in fee, *otherwise than as a mortgagee*, but such person will (save as thereinafter provided (*z*)) be personally liable to pay the fines and fees which would have been payable by him on admittance; and if the last person admitted as copyholder in fee (*being a trustee*) has died before the commencement of the Act (whether or not having disposed of the land by will), his personal representative, if any, will be deemed to have had a better right to be admitted than the devisee or customary heir.

(c) and (d) [These sub-paragraphs deal with derivative interests granted or created out of the customary fee.]

(e) If at the commencement of the Act there is a person entitled to a perpetually renewable lease in the copyhold land (*not being a mortgagee*), the freehold estate in fee simple will vest in that person as if he had been a copyholder in fee.

(f) If the copyholder in fee is a *mortgagee*, the freehold estate in fee simple will (subject to the terms of years absolute of any mortgagees) vest in the person entitled to the equity of redemption.

(g) If a copyholder in fee, or other person entitled to an interest corresponding to a legal estate, is a trustee for a corporation or other person absolutely and beneficially entitled, the freehold estate in fee simple, or other corresponding legal estate (as the case may be), will vest in the corporation or other person so entitled.

(*y*) Above, p. 56.
(*z*) This proviso refers to the proviso mentioned below, p. 72.

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(h) If a person has, under the Limitation Acts, acquired a customary estate corresponding to a legal estate, then a legal estate corresponding to the customary estate so acquired will vest in him.

Proviso to para. (8) of the Twelfth Schedule.

The above provisions are qualified by a long proviso divided into sub-sections containing provisions to the following effect:—

Sub-sect. (i) gives power to the Court, if a question arises as to who had the best right to be admitted as copyholder in fee, or has otherwise become entitled by virtue of the Twelfth Schedule to the freehold estate in fee simple, or to a derivative legal estate, to declare who had the best right to be so admitted, or has become so entitled; or, in case the person having such right or so entitled cannot be found or ascertained, then (subject as therein mentioned) to make an order vesting the freehold estate or a derivative legal estate in such person as may be appointed by the Court.

By sub-sect (ii), where at the commencement or by virtue of the Act the copyhold land is settled land, the freehold estate in fee simple or derivative legal estate, as the case may be, will (subject to the terms of years absolute of mortgagees having priority to the settlement), and without prejudice in equity to any incumbrance affecting any life estate or interest, vest in the tenant for life of full age or statutory owner (including a personal representative entitled to the settled land) upon such trusts and subject to such powers and provisions as may be necessary to give effect to the settlement, save that a fee simple conditional (whether legal or equitable) on the birth of issue will take effect as and be converted into an equitable entailed interest (either general or special, as the case may require), if the fee has not become absolute.

In manors in which there is no custom to entail, a limitation of copyholds to or in trust for a man and the heirs, general or special, of his body will give him an estate, legal or equitable, analogous to the fee simple conditional which a freeholder would have acquired under such a limitation before the passing of the Statute *De donis*. Before he has issue of the specified class he will not be able to alien, but after such issue are born

to him he may alienate at his pleasure (*a*), and his estate is said to become absolute.

By sub-sect. (iii), where at the commencement of the Act the copyhold land or an equitable interest therein capable of subsisting as a legal estate was vested in an infant, the freehold estate in fee simple or derivative legal estate, as the case may be, will (subject as aforesaid) vest in the personal representatives or trustees of the settlement, or other persons who, under Part I. of the Act, become entitled to the legal estate of the infant.

For the reference in this sub-section to Part I. of the Act must be substituted a reference to the substituted provisions of the Property and Settled Land Acts (*b*).

By sub-sect. (iv), where at the commencement of the Act the copyhold land was held in undivided shares, the entirety of the freehold estate in fee simple will (subject to any terms of years absolute required for giving effect to mortgages affecting the entirety) vest in trustees for sale in accordance with the provisions of Part I. of the Act.

For the reference in this sub-section to Part I. of the Act must be substituted a reference to the substituted provisions of the Property and Settled Land Acts (*c*).

By sub-sect. (v), where at the commencement or by virtue of the Act the copyhold land was or is made subject to a trust for sale, the freehold estate in fee simple will (subject to the terms of years absolute of mortgagees) vest in the trustees for sale in accordance with the Act.

The vesting will be in accordance with the substituted provisions of the Property and Settled Land Acts (*d*).

By sub-sect. (vi), where under the provisions of this Schedule the freehold estate in fee simple is (subject or not to any mortgage term) made to vest in any person who was not the copyholder in fee at the commencement of the Act, then such person will be deemed to have been admitted tenant to the inheritance

(*a*) See *Doe* d. *Spencer* v. *Clark*, 5 B. & Ald. 458; Wms. Real Prop., p. 513, 23rd ed.
(*b*) Below, pp. 175, 293.
(*c*) Below, pp. 151 *et seq.*
(*d*) See n. (*c*).

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immediately before such commencement, and such person will ("save as hereinafter provided") be personally liable to pay the fines and fees which would have been payable by him on admittance.

The words "save as hereinafter provided" refer to the provisions of sub-sects. (vii), (viii) and (ix), which deal with the subject of the fees and fines (if any) payable in the several cases therein mentioned.

Other effects of enfranchisement, Twelfth Schedule, paras. (1) to (7).

The provisions of these paragraphs are, shortly, as follows:—

(1)—(a) The land will be freehold land and free from liability for forfeiture for the conveyance or attempted conveyance of an estate of freehold in the land, or for alienation without licence.

(b) The tenant will be free from the customary suits and service and from liability to do fealty.

(c) In place of the lord's right to escheat, the Crown or the Duchy of Lancaster or the Duke of Cornwall (as the case may be) may become entitled to the land as *bona vacantia* under the provisions of Part VIII. of the principal Act (*e*).

(d) The land will be governed as to descent on death and intestacy or partial intestacy and devolution on death by the provisions of Parts VIII. and IX. of the Act (*e*).

(e) The land will (subject to the provisions of Part I. of the Act (*f*) and of this Schedule) be held under the same title as that under which it was held at the commencement of the Act, and will not be subject to any estate, right, charge, or interest affecting the manor.

(f) Every mortgage of the copyhold estate in the land will become a mortgage of the land for a term of years

(*e*) Replaced by the Administration Act.

(*f*) It is thought that the reference is to the changes, intended to be effected by Part I. of the principal Act and brought into operation by the corresponding provisions of the L. P. and S. L. Acts, in the quality and incidents of "legal estates" and "equitable interests" respectively.

absolute in accordance with the provisions of Part I. of the Act (*g*), and accordingly:

(i) Where at the commencement of the Act a mortgage of the customary estate of inheritance in copyhold land effected by surrender, with or without admission, or by a covenant to surrender, is subsisting, then the mortgagee will, by virtue of the Act, acquire a legal term of years absolute in the enfranchised land comprised in his mortgage subject to a proviso for cesser corresponding to the right of redemption subsisting under the mortgage.

(ii) Where at the commencement of the Act the copyhold land has been surrendered to the use of a mortgagee, without notice of a previous covenant to surrender contained in another mortgage, that mortgagee will not be deemed to be a subsequent incumbrancer as respects the last-mentioned mortgage (*h*).

(2) Subject as provided in this paragraph, the enfranchisement will not affect the rights or interests of any person in the enfranchised land under a will, settlement, mortgage, or otherwise by purchase, but those rights and interests will continue to attach upon the enfranchised land in the same way, as nearly as may be, as if the freehold had been comprised in the instrument or disposition under which that person claims.

(3) Subject as provided in this paragraph and with the consequences therein stated, the freehold into which the copyhold estate is converted will be the freehold immediately expectant on any lease or demise of the copyhold land for a term of years absolute subsisting at the commencement or by virtue of the Act, and any lease or demise, otherwise than for a term of years absolute, will take effect in equity only.

(4) The enfranchisement will not deprive a tenant of any commonable right to which he is entitled in respect of the enfranchised land.

(5) The enfranchisement will not affect the rights of the lord or tenant to any mines or minerals, or to work or carry

(*g*) Replaced by the "transitional provisions" contained in Part VII. of the First Schedule to the L. P. Act; below, p. 111.

(*h*) This appears to be an alteration in the law: see *Horlock* v. *Priestley*, 2 Sim. 75.

Part II. Chap. II.

away the same, or the rights, franchises, royalties, or privileges of the lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other sporting rights; but (without prejudice to the mining rights so saved) the tenant is to have full power to disturb or remove the soil so far as is necessary or convenient for the purpose of making roads or drains or erecting buildings or obtaining water on the land.

(6) The enfranchisement will not affect any subsisting liability (whether arising by virtue of a court leet regulation or otherwise) for the construction or maintenance of dykes or other works required for the protection or benefit of any land within a manor or for abating nuisances therein; and any person interested in enforcing the liability may apply to the Court to ascertain or apportion the liability and to charge the same upon or against the land or any interest therein, and the Court may make such order as it thinks fit; and the charge, when made by the order, shall be deemed to be a land charge within the Land Charges Act, 1888 (*i*), and may be registered accordingly; and the jurisdiction of any court leet, customary or other Court in reference to the matter is transferred to the Court.

(7) A right preserved to the lord by this Schedule is not, for the purposes of Part VI. of the Act (*k*), to be deemed a manorial incident unless it is otherwise agreed.

(*i*) Replaced by the L. C. Act.

(*k*) Below, p. 77.

CHAPTER III.

EXTINGUISHMENT OF MANORIAL INCIDENTS.

Section i.—*Introductory.*

Relevant provisions.

THE provisions dealing with this subject are contained in Part VI. (sects. 138 to 144) of the principal Act and the Thirteenth and Fourteenth Schedules thereto, as amended by sect. 2 of the amending Act and paras. 1, 2 and 3 and sub-para. (3) of para. 4 of the Second Schedule thereto.

These amendments introduce into the principal Act two new sections, namely, sects. 142A and 144A.

L. P. Act, 1922, s. 143.

Sect. 143 of the principal Act enacts as follows:—

Construction of Part VI.

143.—(1) Subject to the provisions of this Part of this Act with respect to Crown and Duchy lands, this Part of this Act shall, without prejudice to the general definitions in Part XI. of this Act which when applicable shall apply, be construed as one with the Copyhold Act, 1894:

Provided that the expression "lord" shall, where the context so requires, mean any person having power to effect a compensation agreement in right of the manorial incidents, and for the definition of "tenant" contained in that Act the following definition shall be substituted:—

> "The expression 'tenant' means the person in whom the land enfranchised under Part V. of the Law of Property Act, 1922, is thereby made to vest and the person deriving title under him, and includes the person entitled to the legal estate in or the possession of any other land subject to manorial incidents, whether or not those incidents have been severed from the manor."

(2) Where the right to any manorial incidents is not vested in the lord of the manor, but in some other person, the provisions of this Part of this Act shall in relation to such manorial incidents have effect as if the person who on a sale would be able to dispose of those manorial incidents were substituted for the lord, and the manorial incidents were substituted for the manor.

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(3) The provisions of section sixty-seven of the Conveyancing Act, 1881, shall apply to all notices authorised to be given under this Part of this Act to which section fifty-seven of the Copyhold Act, 1894, does not apply.

(4) All decisions or orders of the Minister made under this Part of this Act shall (subject only to such appeal to the Court as may be prescribed by rules of Court) be final.

Sub-s. (1), Crown and Duchy lands.

The provisions of Part VI. of the principal Act in regard to Crown and Duchy lands are contained in sect. 141.

"General definitions."

The general definitions in Part XI. of the Act are set out above (*a*). They include the definition of the "person able to dispose thereof on a sale."

Sub-s. (3). Notices.

Sect. 67 of the Conveyancing Act, 1881, is re-enacted by sect. 196 of the Property Act.

Sub-s. (4). Appeals.

Rules of Court regulating appeals from the Minister have been made (*b*).

Section ii.—*Outline of Part VI.*

The provisions as to the extinguishment of, and compensation for, manorial rights are somewhat elaborate, and only an outline of them can here be given.

Period for extinguishment. L. P. Act, 1922, s. 138 (1).

The manorial incidents affecting enfranchised land saved by Part V. of the Act, and all manorial incidents of a like nature affecting any other land (*c*), will, by virtue of the Act, be extinguished in respect of the land thereby affected, but subject to the payment of such compensation (if any) in respect of any manorial incidents referred to in Part II. of the Thirteenth Schedule to the Act as is payable under the provisions of this Part of the Act, upon the happening of any of the following events:—

(a) Where an agreement in writing between the lord and the tenant, or other persons authorised to effect agreements in this behalf, as to the compensation for the

(*a*) Pp. 58 to 62.
(*b*) The Rules of the Supreme Court (Law of Property and other Acts), 1925.
(*c*) *E.g.*, land held in free tenure but subject to custom; above, p. 57.

extinguishment (in the Act referred to as "a compensation agreement" (*d*)) is made within ten years after the commencement of the Act, then upon the execution of the agreement;

(b) Where a notice requiring the ascertainment of such compensation is served by the lord on the tenant or by the tenant on the lord within ten years after the commencement of the Act, then upon service of the notice; but the lord is not to be entitled to serve such notice till after the expiration of five years from such commencement;

(c) Where no such agreement has been made or notice served before the expiration of ten years after the commencement of the Act, then upon the expiration of those ten years.

These provisions are qualified as follows:—

(1) The extinguishment of manorial incidents is not to affect the right to enforce any manorial incident which has become due or enforceable before the date of the extinguishment (*e*).

(2) In the case of certain manors the Minister may make an order extending the said period of ten years (*f*).

(3) By sect. 140 of the Act, where, in respect of any enfranchised land or in respect of any other land liable to any heriot, quit rent, chief rent, free rent, or other manorial incident, the manorial incidents affecting the land are, by virtue of the Act, extinguished upon the expiration of ten years from the commencement of the Act by reason of no compensation agreement having been made or notice given to ascertain the compensation before the expiration of that period, application may at any time after the expiration of the said ten years and before the expiration of fifteen years from the commencement of the Act be made to the Minister to determine the amount of compensation, and, if no such application has been made before the expiration of the said period of fifteen years, no compensation will be payable in respect of the extinguishment of manorial incidents.

(*d*) L. P. Act, 1922, s. 138 (3).
(*e*) L. P. Act, 1922, s. 138 (1) (i).
(*f*) *Ib.* (ii).

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Mode of ascertaining compensation.

The compensation may be ascertained by a compensation agreement effected independently of the Copyhold Act, 1894, or it may be ascertained under that Act, as applied by the principal Act (*g*).

Compensation agreements.

Compensation rentcharge.

A compensation agreement may be made by the persons who on a sale would be able to dispose of the manorial incidents and the land affected thereby respectively (*h*); and such persons may agree to the creation of a compensation rentcharge, and, subject to the consent in writing of any incumbrancer whose consent or concurrence is required on a sale of the land being obtained, the terminable rentcharge so created will have the same priority as if it had been created under an award of the Minister (*i*).

Where a compensation agreement provides for the creation of a compensation rentcharge, and the compensation is to be paid by equal annual instalments with interest secured by an annual terminable rentcharge issuing out of the land comprised in the agreement or any part thereof, that agreement will operate by virtue of the Act as a grant by all necessary parties of an annual terminable rentcharge of the agreed amount (varying with the amount of the principal and interest for the time being payable) issuing out of the land to be charged therewith of the like nature and with the like incidents as if the agreement had been effected under the Copyhold Act, 1894, as amended by the principal Act (*k*).

Compensation in a gross sum.

Where the compensation (whether ascertained by a compensation agreement or under the Copyhold Act, 1894, as applied by the principal Act) is to be a gross sum (not payable by instalments), the land formerly affected by the manorial incidents will, in priority to any other incumbrances (except tithe rentcharge and any charge having priority by statute), stand charged with the payment of that sum and interest thereon payable half-yearly at the rate of five and a half per cent. per annum from the date of the extinguishment until paid, and for the purpose of recovering the same the person entitled to give a receipt therefor will, after the expiration of

(*g*) Sect. 138 (3) (7).
(*h*) Sect. 138 (3).
(*i*) Sect. 138 (5) (i).
(*k*) Sect. 138 (6).

six months from the time when the amount was ascertained, have all the powers conferred by the Conveyancing Act, 1881 (as amended by any subsequent enactment (*l*)), on a mortgagee by deed whose power of sale has arisen, and as if the land had been charged by way of legal mortgage to him (*m*).

Forms

The forms of compensation agreement and receipt for rents, fines, heriots, and fees, and for compensation money contained in Part I. of the Thirteenth Schedule to the Act, may, when effected otherwise than under the Copyhold Act, 1894, be used, with such variations as the circumstances of each case may require, and will be deemed sufficient in the cases to which such forms apply (*n*).

Agreement as to lords' rights.

The lord and the tenant or other persons authorised to effect the compensation agreement may in writing agree that any right of the lord which is preserved by the Twelfth Schedule to the Act (*o*) shall be treated as a manorial incident and be extinguished as if it were a manorial incident saved by Part V. of the Act (*p*), or that there shall be granted to the lord as compensation or as part of the compensation for the extinguishment of manorial incidents any estate or right of the tenant or any right of way or other easement in or over the land affected, for more effectually winning and carrying away any mines or minerals under the land, including any right to let down the surface; Provided that, where any such agreement relates to mines or minerals, the consideration for the estate or right shall be determined by agreement and not otherwise, and any such agreement for the extinguishment of the right of the lord in or to any mines and minerals shall, subject to the provisions of the agreement, operate as a conveyance to the tenant of such right notwithstanding that the agreement may not be under seal (*q*).

Mines and minerals.

Facilities for extinguishment of manorial incidents and compensation rentcharges.

Sect. 139 of the Act contains provisions for facilitating the extinguishment of manorial incidents under Part VI. of the Act, whether effected under the Copyhold Act, 1894, as applied by the Act, or independently of that Act, and such provisions,

(*l*) Replaced by sect. 101 *et seq.* of the L. P. Act.
(*m*) Sect. 138 (7).
(*n*) Sect. 138 (11).
(*o*) Twelfth Schedule, para. 7; above, p. 76.
(*p*) Above, p. 62. (*q*) Sect. 138 (12).

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if the extinguishment is effected under the Copyhold Act, 1894, are to have effect as amendments of that Act.

Such provisions include the following:—

Compensation to stewards.

The compensation, if any, for loss of office, payable to the steward, when appointed before the passing of the Act (*r*), is (in default of agreement) to be such as is set out in the Fourteenth Schedule to the Act (*s*).

The compensation, if any, to the steward is to be paid by the lord or the person effecting the compensation agreement in right of the manorial incidents, and the amount thereof and any costs or expenses paid or incurred by the lord which are, by virtue of the Act, or by agreement, recoverable from the tenant, are to be added to and treated as part of the compensation for the extinguishment of the manorial incidents; and the lord or other person aforesaid may require the amount of compensation so paid by him, and his costs and expenses incurred in connexion with the extinguishment to be discharged out of capital money held on the trusts of any settlement of the manor, or out of personal estate held on the same trusts as the proceeds of sale of the manor are directed to be held, or may charge the amount on the manor or on land settled on the same limitations or trusts as the manor, or on any rentcharge arising in respect of the extinguishment of any manorial incidents within the manor, and such charge shall be by charge by way of legal mortgage, or by a certificate of charge under the Copyhold Act, 1894, which shall have the same effect as a charge by way of legal first mortgage (*t*).

Compensation by instalments.

Unless the compensation for the extinguishment of the manorial incidents is, within thirty days after the ascertainment thereof, paid in a gross sum, the compensation shall (unless the parties otherwise agree) be paid by twenty equal annual instalments, the first instalment to be paid on the first day of January next after the ascertainment of the amount of the compensation, with interest at five and a half per cent. per annum on the amount of the compensation from the date of the extinguishment of the manorial incidents, and a further instalment, with interest at the like rate on so much of the

(*r*) The 29th June, 1922. (*s*) Sect. 139 (1) (iii).
(*t*) Sect. 139 (1) (iv).

compensation as for the time being remains unpaid, shall be paid on every subsequent first day of January until the whole compensation shall be fully paid, and so long as any of the said instalments and interest or either of them remain payable, the payment of the compensation shall be secured by a terminable rentcharge issuing out of the land to which the manorial incidents attached equal to the said instalments and interest, payable on the same days but accruing from day to day, and varying with the amount from time to time payable:

Settled land.

Provided that, if the land affected is settled land, and there is sufficient capital money whereout the compensation may be discharged, or if the land affected is held on trust for sale and there is sufficient personal estate (not being chattels real) settled on the same trusts as the proceeds of sale whereout the compensation may be discharged, or if the compensation does not exceed twenty pounds, the compensation shall (unless the Court, on the application of any person interested, otherwise directs) be paid in a gross sum (not by instalments), and in the former cases (subject to any order of the Court to the contrary) shall be paid out of such capital money or personal estate, and in any such case may, subject as aforesaid, be recovered by the lord or other person entitled to give a receipt therefor as a debt due to him from the tenant or the trustees of the capital money or personal estate, as the case may be, with interest thereon from the date of the extinguishment at the rate of five and a half per cent. per annum (*u*).

Scale of compensation.

The compensation will, unless otherwise agreed, be ascertained in accordance with the scale of compensation set out in Part II. of the Thirteenth Schedule to the Act, but the Minister is empowered in special cases to vary the scale or fix some other scale which shall be applicable to the case, and also, where there are fee simple and derivative interests, to decide (subject to appeal to the Court) how the compensation money shall be borne (*x*).

Notice requiring ascertainment of compensation.

Sub-sect. (1) (ix) of sect. 139 of the Act provides for the incidence of expenses if the notice requiring the ascertainment of the amount of the compensation is given by the lord to the

(*u*) Sect. 139 (1) (v).

(*x*) Sect. 139 (1) (viii).

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tenant or by the tenant to the lord within ten years after the commencement of the Act; but empowers the lord and the tenant, notwithstanding that a notice has been served, at any time within ten years after the commencement of the Act and before the amount of the compensation has been ascertained pursuant to such notice, to agree (subject to discharging any costs incurred in relation to such notice) to extinguish the manorial incidents by a compensation agreement.

Amendments of Copyhold Act, 1894.

Sub-sect. (2) (x) of the same section provides that, where, in the Copyhold Act, 1894, interest is fixed at the rate of four per cent. per annum, the rate shall be increased to five and a half per cent. per annum; and references to perpetual compensation rentcharges shall be construed as referring to compensation payable by instalments and secured by a terminable rentcharge. Sub-sect. (2) of the same section introduces further amendments in the Copyhold Act, 1894, for facilitating the extinguishment of manorial incidents under Part VI. of the principal Act, where the extinguishment is effected under the Copyhold Act, 1894, as applied by Part VI. of the principal Act.

Redemption of rentcharges

Sub-sect. (3) of the same section contains provisions for the redemption of compensation terminable rentcharges. For the reference in this sub-section to sect. 45 of the Conveyancing Act, 1881 (as amended by any subsequent enactment) must be substituted a reference to sect. 191 of the Property Act.

Rules. Power to make.

By sub-sect. (4) of the same section the Minister is empowered to make rules for prescribing the procedure under that section, and the manner in which any notice under that section may be served, and generally for giving effect to the provisions of Part VI. of the Act, and the rules so made are to set forth the provisions of the Copyhold Act, 1894, applicable for the purposes of Part VI. of the principal Act, as modified and applied thereby.

The Manorial Incidents (Extinguishment) Rules, 1925.

Rules (*y*) under the powers vested in him by this sub-section were made by the Minister of Agriculture and Fisheries on the 6th August, 1925. The Rules are set forth in a Schedule to

(*y*) S. R. & O. 1925, No. 810.

an Order or direction under the seal of the Minister, which is as follows:—

"The Minister of Agriculture and Fisheries, for the purpose of giving effect to the provisions of Part VI. of the Law of Property Act, 1922, hereby directs that the procedure under section one hundred and thirty-nine of that Act, except where the extinguishment of manorial incidents is effected independently of the Copyhold Act, 1894, shall be regulated by the Rules set forth in the Schedule hereto, and in such Schedule are set forth the provisions of the Copyhold Act, 1894, applicable for the purposes of Part VI. of the Law of Property Act, 1922, as modified and applied thereby."

Short title, &c. of Rules.

By Rule 66 these Rules are to come into operation on the 1st January, 1926, and may be cited as the Manorial Incidents (Extinguishment) Rules, 1925, and do not extend to Scotland or Ireland.

The Rules are divided into nine Parts.

Part I. of Rules.

Part I. (Rules 1 to 4) relates to "compulsory extinguishment."

Compulsory extinguishment.

Rule 1 is as follows:—

Application of Part I. of Schedule.

1.—(1) This Part of this Schedule shall apply—

(a) in any case where under the Law of Property Act, 1922, a notice requiring the ascertainment of compensation for the extinguishment of manorial incidents affecting any land has been served by the lord on the tenant after the thirty-first day of December nineteen hundred and thirty or by the tenant on the lord on or after the first day of January nineteen hundred and twenty-six and in either case before the first day of January nineteen hundred and thirty-six; and

(b) where no agreement has been made or notice served under the said Act before the first day of January nineteen hundred and thirty-six and application is made to the Minister under the said Act to determine the compensation to be paid for the extinguishment of manorial incidents;

Provided that the Rules in this Part shall not apply in any case where the lord and the tenant after service of such notice as aforesaid have, at any time before the first day of January, nineteen hundred and thirty-six, and before the amount of compensation has been ascertained pursuant to such notice, agreed (subject to discharging any costs incurred in relation to the notice) to extinguish the manorial incidents by a compensation agreement effected independently of these Rules.

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(2) Proceedings under these Rules arising out of the service of such a notice or application as aforesaid are hereinafter referred to as a compulsory extinguishment.

Part II. of Rules.

Part II. (Rules 5 to 7) relates to "voluntary extinguishment."

Voluntary extinguishment.

Rule 5 (1) is as follows:—

Voluntary extinguishments.

5.—(1) The lord of any manor may under these Rules with the consent of the Minister enter into an agreement as to the compensation for the extinguishment of the manorial incidents affecting any land held of the manor, and the tenant of the land affected by the extinguishment may with the consent of the Minister enter into any such agreement and proceedings under these Rules in pursuance of such an agreement are hereinafter referred to as a voluntary extinguishment: Provided that the Minister shall not give his consent to such an agreement unless he is satisfied that such course is the most convenient in the circumstances, and no persons other than those who if the land had not been enfranchised by virtue of Part V. of the Law of Property Act, 1922, would have been entitled to effect an enfranchisement with the consent of the Minister under Part II. of the Copyhold Act, 1894, shall be entitled to enter into an agreement under this Part of these Rules.

Rules, Parts III to V.

Part III. (Rules 9 to 45) contains "General Provisions"; Part IV. (Rules 46 to 54) relates to the "Application of Rules to Special Manors"; and Part V. (Rules 55 to 62) contains "Supplementary Provisions."

Rules 61 and 62 are as follows:—

General savings.

61. Nothing in these Rules shall interfere with any extinguishment which may be made independently of these Rules or with the exercise of any powers contained in any Act of Parliament.

Saving as to land registry.

62. Nothing in these Rules shall affect any right acquired in pursuance of registration under the Land Registry Act, 1862, or the Land Registration Act, 1925, except to such extent as may be recorded by registration in pursuance of those Acts.

Part VI. Forms.

Part VI. (Rule 63) contains certain forms referred to in the foregoing Rules.

Part VII. Scale of compensation.

Part VII. (Rule 64) sets out the "Scale of Compensation for Extinguishment of Manorial Incidents," being identical with the scale set out in Part II. of the Thirteenth Schedule to the principal Act, as amended by the Second Schedule to the amending Act.

Part VIII. (Rule 65) sets out the "Scale of Steward's Compensation for Loss of Office," being identical with the scale set out in the Fourteenth Schedule to the principal Act.

Part VIII. Scale of steward's compensation.

Part IX. contains only Rule 66, already referred to (*z*).

Part IX. Short title, &c.

Sect. 142 of the principal Act applies Part VI. of the Act, with certain modifications, in the case of a manor in which the fines are certain, and in which, before the commencement of the Act, it was the practice for copyholders [in fee (*a*)] to grant derivative interests to persons who were admitted as copyholders of the manor, or where, by virtue of the Act (*b*), legal estates derived out of the fee simple are created for giving effect to former equitable interests.

Application of Part VI. of the Act to certain manors.

Sect. 142A provides that, notwithstanding that, as respects manors belonging to the Crown, all manorial incidents may become extinguished, the acceptance of the office of steward or other principal officer shall be deemed to be an acceptance of an office of profit from the Crown for the purposes of sect. 25 of the Succession to the Crown Act, 1707 (*c*).

Saving of office of profit from the Crown.

Sects. 144 and 144A of the Act contain general provisions in regard to court rolls and manorial documents. They are as follows:—

General Provisions.

144. Any person interested in enfranchised land may on payment of the fee prescribed by the Lord Chancellor, inspect at any reasonable hour any Court Rolls of the manor of which the land was held; and Court Rolls shall (whether before or after the manorial incidents have been extinguished), for the purposes of section fourteen of the Evidence Act, 1851, be deemed to be documents of such a public nature as to be admissible in evidence on their mere production from the proper custody.

Power to inspect Court Rolls.

144A.—(1) All manorial documents shall be under the charge and superintendence of the Master of the Rolls.

Manorial documents.

(2) Save as hereinafter provided, manorial documents shall remain in the possession or under the control of the lord for the time being

(*z*) Above, p. 85.

(*a*) These words are repealed by the Second Schedule to the amending Act.

(*b*) See para. 8 (c) of the Twelfth Schedule to the principal Act.

(*c*) This section preserves the customary mode of resigning a seat in the House of Commons.

of the manor to which the same relate and he shall not be entitled to destroy or damage wilfully such documents.

(3) The Master of the Rolls may from time to time make such enquiries as he shall think fit for the purpose of ascertaining that any manorial documents are in the proper custody, and are being properly preserved, and the lord of the manor to which such documents relate, or the governing body of any public library, or museum or historical or antiquarian society, to which the same may have been transferred, as hereinafter provided, shall furnish the Master of the Rolls with all such information with respect thereto as he may require.

(4) The Master of the Rolls may direct that any manorial documents which, in his opinion, are not being properly preserved, or which he is requested by the lord of a manor to deal with under this subsection, shall be transferred to the Public Record Office, or to any public library, or museum or historical or antiquarian society, which may be willing to receive the same, and if the same shall be transferred to any public library, or museum or historical or antiquarian society, the governing body thereof shall thereafter have the custody thereof and shall be responsible for the proper preservation and indexing thereof.

(5) Nothing contained in this section shall prejudice or affect the right of any person to the production and delivery of copies of any manorial documents or to have the same kept in a proper state of preservation; in particular the lord of the manor shall remain entitled to require the same to be produced to him, or in accordance with his directions, free of any cost.

(6) In this section "manorial documents" mean court rolls, surveys, maps, terriers, documents and books of every description relating to the boundaries, franchises, wastes, customs or courts of a manor, but do not include the deeds and other instruments required for evidencing the title to a manor; "manor" includes a lordship and a reputed lordship; and "lord of the manor" includes any person entitled to manorial documents.

(7) The Master of the Rolls may make rules for giving effect to this section, and may revoke or vary any such rules.

CHAPTER IV.

CONVERSION OF CERTAIN LEASEHOLD INTERESTS.

Section i.—*Relevant Enactments.*

Relevant enactments.

SECT. 145 (*d*), which is the only unrepealed section of Part VII. of the principal Act, enacts as follows:—

Conversion of Perpetually Renewable Leaseholds into Long Terms.

Conversion of perpetually renewable leaseholds.

145. For the purpose of converting perpetually renewable leases and underleases (not being an interest in perpetually renewable copyhold land enfranchised by Part V. of this Act, but including a perpetually renewable underlease derived out of an interest in perpetually renewable copyhold land) into long terms, for preventing the creation of perpetually renewable leasehold interests and for providing for the interests of the persons affected, the provisions contained in the Fifteenth Schedule to this Act shall have effect.

The Fifteenth Schedule to the Act must be read as amended by sect. 2 of the amending Act, and para. 5 of the Second Schedule to the latter Act, and by the Property Act (*e*).

Section ii.—*Definitions.*

Sect. 190 of the principal Act is as follows:—

Special definitions applicable to Part VII.

190. In Part VII. of this Act—

(i) "Lessor" means the person for the time being entitled in reversion expectant on the interest demised, or, where the reversion is encumbered, the person having power to accept a surrender of the lease, or underlease;

(ii) "Lessee" and "underlessee" include the persons respectively deriving title under them;

(*d*) As to the repeal of sect. 146, the only other section in Part VII., see above, p. 9, and note (*s*).

(*e*) L. P. Act, s. 207, and Seventh Schedule, repealing sub-sect. (3) of para. 7 of the Fifteenth Schedule to the principal Act.

Part II. Chap. IV.

(iii) "A perpetually renewable lease or underlease" means a lease or underlease the holder of which is entitled to enforce (whether or not subject to the fulfilment of any condition) the perpetual renewal thereof, and includes a lease or underlease for a life or lives or for a term of years, whether determinable with life or lives or not, which is perpetually renewable as aforesaid, but does not include copyhold land held for a life or lives or for years, whether or not determinable with life, where the tenant had before the commencement of this Act a right of perpetual renewal subject or not to the fulfilment of any condition;

(iv) "Underlease," unless the context otherwise requires, includes a subterm created out of a derivative leasehold interest.

Copyhold land.

Copyhold land held as mentioned in definition (iii) is enfranchised and becomes freehold land under the provisions of Part V. of the principal Act (*f*).

Section iii.—*Conversion of Perpetually Renewable Leaseholds.*

The Fifteenth Schedule, as amended, deals mainly with the subject of the conversion of perpetually renewable leaseholds into long terms (*g*). Only an outline of its main provisions in this respect can here be given.

Paras. 1 and 2 of the Fifteenth Schedule indicate the main scheme which underlies the conversion.

Sched. XV., paras. 1 and 2.

Paras. 1 and 2 are as follows:—

Conversion of perpetually renewable leases into long terms.

1.—(1) Land comprised in a perpetually renewable lease which was subsisting at the commencement of this Act shall, by virtue of this Act, vest in the person who at such commencement was entitled to such lease, for a term of two thousand years, to be calculated from the date at which the existing term or interest commenced, at the rent and subject to the lessees' covenants and conditions (if any) which under the lease would have been payable or enforceable during the subsistence of such term or interest.

(2) The rent, covenants and conditions (if any) shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the term created by this Act; and that term shall take effect in substitution for the term or interest created by

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(*f*) See Chapter II., above, pp. 56 *et seq.*

(*g*) As to certain other leases affected by the Fifteenth Schedule, see sect. (iv), below, p. 95.

the lease, and be subject to the like power of re-entry (if any) and other provisions which affected the term or interest created by the lease, but without any right of renewal.

Conversion of perpetually renewable underleases into long terms.

2.—(1) Land comprised in any underlease, which at the commencement of this Act was perpetually renewable and was derived out of a head term affected by this Act, shall, by virtue of this Act, vest in the person who at such commencement was entitled to the subterm or interest for a term of two thousand years less one day, to be calculated from the date at which the head term created by this Act commenced, at the rent and subject to the underlessee's covenants and conditions (if any) which under the underlease would have been payable or enforceable during the subsistence of such subterm or interest.

(2) The rent, covenants and conditions (if any) shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the subterm created by this Act and that subterm shall take effect in substitution for the subterm or interest created by the underlease, and be subject to the like power of re-entry (if any) and other provisions which affected the subterm or interest created by the underlease, but without any right of renewal.

(3) The foregoing provisions of this section shall also apply to any perpetually renewable subterm or interest which, at the commencement of this Act, was derived out of any other subterm or interest, but so that in every case the subterm created by this Act shall be one day less in duration than the derivative term created by this Act, out of which it takes effect.

Para. 3. Incidence of equities, incumbrances and sub-terms.

Para. 3 provides (amongst other things) that every term or sub-term created by this Part of the Act shall be subject to all the same trusts, powers, executory limitations over, rights and equities (if any), and to all the same incumbrances and obligations of every kind as the term, sub-term or other interest which it replaces would have been subject to if this Part of the Act had not been passed; and deals also with the case where an infant is entitled, and with the case of a subsisting sub-term which is not perpetually renewable.

Paras. 5 to 8. Dispositions, contracts and powers.

Para. 5 (relating to "Dispositions purporting to create perpetually renewable leaseholds"), para. 6 (relating to "Satisfaction of existing contracts to grant perpetually renewable interests"), para. 7 (1) (relating to "Future contracts for renewal"), and para. 8 (1) (relating to the "Effect of powers to grant renewable leases") have for their object to secure that such dispositions, contracts and powers shall respectively operate to create, or as a contract or power to create, a lease for a term of 2,000 years, or, in the case of an underlease, for a term less in duration by one day than the term out of which it is to be derived.

Part II. Chap. IV.

Para. 10 is as follows:—

Powers and covenants implied in leases and underleases affected.

10.—(1) Every lease or underlease which, by virtue of this Part of this Act, takes effect for a term of two thousand years or for a derivative term of two thousand years less one or more days (as the case may require) shall be deemed to contain—

(i) A power (exercisable only with the consent of the persons, if any, interested in any derivative interest which might be prejudicially affected) for the lessee or underlessee by giving notice in writing to the lessor at least ten days before the lease or underlease would (but for this Act) have expired if it had not been renewed after the commencement of this Act, to determine the lease or underlease at the date on which (but for this Act) it would have expired if it had not been renewed as aforesaid;

Also a like power (exercisable with the like consent if any) to determine subsequently by notice as aforesaid the lease or underlease at the time at which, if this Act had not been passed and all renewals had in the meantime been made in due course, the lease or underlease would have expired if it had not been further renewed after the date of the notice:

Provided that if any such notice be given all uncommuted additional rent attributable to a fine or other money which, if this Act had not been passed, would have been payable on a renewal made after the date of the notice, shall cease or not become payable.

(ii) A covenant by the lessee or underlessee to register every assignment or devolution of the term or subterm, including all probates or letters of administration affecting the same, with the lessor or his solicitor or agent, within six months from the date of the assignment, devolution, or grant of probate or letters of administration, and to pay a fee of one guinea (which shall be accepted in satisfaction of all costs) in respect of each registration; and the covenant so deemed to be contained shall be in substitution for any express covenant to register with the lessor or his solicitor or agent, assignments or devolutions of the term or subterm, and to pay fees or costs in respect of such registration:

(iii) A covenant by the lessee or underlessee within one year from the commencement of this Act to produce his lease or underlease or sufficient evidence thereof (including an assignment of part of the land comprised in the lease or underlease) with any particulars required to show that a perpetual right of renewal was subsisting at the commencement of this Act, to the lessor or his solicitor or agent, who shall, subject to the payment of his costs, if the right of renewal is admitted or proved, endorse notice of that fact on the lease, underlease, assignment, or copy thereof, at the expense of the lessee or underlessee; and such endorsement signed by or on behalf of the lessor shall, in favour of a purchaser, be sufficient evidence that the right of

renewal was subsisting as aforesaid, either in respect of the whole or part of the land as the case may require:

and the power of re-entry (if any) contained in the lease or underlease shall apply and extend to the breach of every covenant deemed to be contained as aforesaid.

(2) If any dispute arises respecting the date on which a notice is authorised to be served by this section, or whether or not a lease or underlease or assignment or a copy thereof ought to be endorsed as aforesaid, the matter shall be submitted to the Minister for determination in the manner provided by this Act.

Para. 11 is as follows:—

Liability of lessees and underlessees.

11.—(1) In the case of every term or subterm created by this Act or under any power conferred by this Part of this Act, each lessee or underlessee, although he may be the original lessee or underlessee, and notwithstanding any stipulation to the contrary, shall be liable only for rent accruing and for breaches of covenants or conditions occurring while he or his personal representatives shall have the term or subterm vested in him or them, and in like manner, as respects an original lessee or underlessee, as if the term or subterm had, immediately after its creation, been assigned to him.

(2) Nothing in this Part of this Act shall affect the liability of any person in respect of rent accruing or the breach of any covenant or condition occurring before the commencement of this Act.

Para. 12. Conversion of fines into additional rent.

Para. 12 contains provisions for the conversion into additional rent of any fine or other money, including a heriot, which, under the lease, underlease, or otherwise, is payable by the lessee or underlessee on renewal; and for ascertaining the annual instalments of the additional rent, which is to be deemed part of the rent reserved by the lease or underlease for all purposes, including any covenant for payment of rent or proviso for re-entry contained in the lease or underlease.

Para. 13. Interest on fines.

Para. 13 provides for the payment of interest on any additional rent payable in lieu of a fine.

Para. 14. Provisions respecting commutation of additional rent and other matters.

Para. 14 empowers the lessor and lessee or underlessee to agree in regard to any of the matters therein mentioned, and provides that a statement in writing respecting any such agreement, which is endorsed on the lease or underlease, or the counterpart or assignment, and signed by the lessor and lessee or underlessee, shall be conclusive evidence of the matters stated.

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Para. 15. Compensation of lessors' agents.

Para. 15 makes provision for satisfying claims for compensation by any officer, solicitor, or other agent of the lessor in respect of fees or remuneration which would have been payable by the lessee or underlessee on any renewal if the Act had not been passed.

Para. 16. Disputes to be submitted to the Minister.

Para. 16 contains provisions for submission to the Minister for determination of any dispute arising between the lessor and lessee or underlessee, or the lessor's agent, as to any of the several matters therein mentioned.

Regulations.

By sub-para. (2) of para. 16 the Minister may issue regulations in respect of any of the matters aforesaid, and may determine by whom and in what proportions the cost of any application to the Minister shall be paid.

Regulations (*h*) under this power were made by the Minister of Agriculture and Fisheries on the 24th August, 1925. They came into operation on the 1st January, 1926, and may be cited as the Renewable Leasehold Regulations, 1925 (*i*), and do not extend to Scotland or Ireland (*k*).

Para. 17. Power to raise and apply capital for commuting additional rent.

Para. 17 contains power for a tenant for life of full age, statutory owner, trustee, or other person authorised as therein mentioned, to pay, apply, or raise money for the commutation of any additional rent made payable by the Act.

Para. 18. Notices.

By para. 18 the provisions of sect. 67 of the Conveyancing Act, 1881 (*l*), are to apply to any notice required or authorised to be given under this Part of the Act or under any provision implied by this Part of the Act.

Para. 19. Registered leases and underleases.

By para. 19, where any lease or underlease to which this Part of the Act applies is registered under the Land Transfer Acts (*m*), effect is to be given to the provisions of the principal Act by making such alterations in the register as may be prescribed under those Acts (*n*).

(*h*) S. R. & O. 1925, No. 857.
(*i*) Regulation (5).
(*k*) Regulation (6).
(*l*) Replaced by sect. 196 of the L. P. Act.
(*m*) Replaced by the Registration Act.
(*n*) See Rule 210 of the L. R. Rules, 1925.

Para. 20 is as follows:—

Para. 20. Office copies and searches.

20.—(1) The original or counterpart of any lease or underlease or assignment to which this Part of this Act applies may be deposited at the Central Office of the Supreme Court.

(2) A separate file of instruments so deposited shall be kept, and any person who furnishes the prescribed evidence to show that he has a sufficient interest in the lease or underlease or reversion expectant thereon may search that file and inspect the lease or underlease or counterpart or assignment, and an office copy thereof shall be delivered to him at his request.

(3) A copy of an instrument so deposited, with any plan or endorsements thereon, may be presented at any time at the Central Office, and, if found correct, may be stamped as an office copy, and when so stamped shall become and be an office copy.

(4) An office copy of the instrument so deposited with the plan and endorsements (if any) shall without further proof be sufficient evidence of the contents of the instrument, plan, and endorsements (if any), and of the deposit thereof at the Central Office.

(5) Where an instrument so deposited has perished or become undecipherable, an office copy thereof may be similarly deposited, and office copies thereof may be issued in lieu of office copies of the original, and the provisions of this section shall apply thereto as if office copies so issued were office copies of the original instrument.

(6) General rules may be made for the purposes of this section prescribing the evidence to be furnished before a search is authorised, regulating the practice of the Central Office, and prescribing, with the concurrence of the Treasury, the fees to be taken therein.

General Rules have been made under sub-para. (6) of this paragraph (*o*).

Section iv.—*Conversion of Leases for Lives, &c.*

Sub-sect. (6) of sect. 149 of the Property Act (*p*) provides as follows:—

Certain leases, underleases and contracts therefor to take effect as leases, underleases,

(6) Any lease or underlease, at a rent, or in consideration of a fine, for life or lives or for any term of years determinable with life or lives, or on the marriage of the lessee, or any contract therefor, made before or after the commencement of this Act, or created by virtue of Part V. of the Law of Property Act, 1922, shall take effect as a lease, underlease or contract therefor, for a term of ninety years determinable

(*o*) See the Filing of Leases Rules, 1925, S. R. & O., 1925, No. 1128/L. 33; the Filing of Leases Fee Order, 1925, S. R. & O. 1925, No. 1149/L. 35.

(*p*) This sub-section replaces sub-para. (3) of para. 7 of the Fifteenth Schedule to the L. P. Act, 1922; see above, p. 89, n. (*e*).

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or contracts therefor, for a term of ninety years determinable.

after the death or marriage (as the case may be) of the original lessee, or of the survivor of the original lessees, by at least one month's notice in writing given to determine the same on one of the quarter days applicable to the tenancy, either by the lessor or the persons deriving title under him, to the person entitled to the leasehold interest, or if no such person is in existence by affixing the same to the premises, or by the lessee or other persons in whom the leasehold interest is vested to the lessor or the persons deriving title under him:

Provided that—

(*a*) this subsection shall not apply to any term taking effect in equity under a settlement or created out of an equitable interest under a settlement for mortgage, indemnity, or other like purposes;

(*b*) the person in whom the leasehold interest is vested by virtue of Part V. of the Law of Property Act, 1922, shall, for the purposes of this subsection, be deemed an original lessee;

(*c*) if the lease, underlease, or contract therefor is made determinable on the dropping of the lives of persons other than or besides the lessees, then the notice shall be capable of being served after the death of any person or of the survivor of any persons (whether or not including the lessees) on the cesser of whose life or lives the lease, underlease, or contract is made determinable, instead of after the death of the original lessee or of the survivor of the original lessees;

(*d*) if there are no quarter days specially applicable to the tenancy, notice may be given to determine the tenancy on one of the usual quarter days.

The references in the above sub-section to the Law of Property Act, 1922, are to sect. 133 of that Act (*q*).

Effect of power to grant certain leases or underleases.

Sub-para. (2) of para. 8 of the Fifteenth Schedule to the last-mentioned Act provides as follows:—

(2) Every power to grant a lease or underlease at a rent or in consideration of a fine for life or lives, or for any term of years determinable with life or lives or on the marriage of any person, shall have effect in regard to any grant made after the commencement of this Act, as if the same authorised the grant of a lease or underlease for a term not exceeding ninety years determinable after the death or marriage (as the case may be) of the original lessee or of the survivor of the original lessees by at least one month's notice in writing given to determine the same on one of the usual quarter days, either by the lessor or the persons deriving title under him to the person entitled to the leasehold interest, or by the lessee or other persons in whom the leasehold interest is vested to the lessor or the persons deriving title under him.

(*q*) Above, p. 68.

PART III.

The Property Act.

CHAPTER I.

LEGAL ESTATES.

Section 1.—*The "Primary Section."*

New classification of "legal estates" and "equitable interests."

As from the commencement (*a*) of the Property Act a change, of far-reaching effect (*b*), takes place in the classification of "legal estates" and "equitable interests," and in the significance of those expressions as applied to estates, interests and charges in or over land.

L. P. Act, s.1.

As from such commencement the only estates in land capable of subsisting or of being conveyed or created at law, *i.e.*, as "legal estates" (apart from certain analogous interests or charges in or over land, which also rank as "legal estates"), are:—

(a) An estate in fee simple absolute in possession; and
(b) A term of years absolute.

This change is effected by the following section of the Property Act; a section which stands first not only in numerical order but also in the order of importance, as being the foundation on which the new system of conveyancing is built up:—

Legal estates and equitable interests.

1.—(1) The only estates in land which are capable of subsisting or being conveyed or created at law are—
(*a*) An estate in fee simple absolute in possession;
(*b*) A term of years absolute.

(*a*) The 1st January, 1926.

(*b*) At any rate, as regards the methods of conveyancing. For, as the writer submits, the change as affecting "beneficial interests" subsisting or capable of taking effect in land, or in charges or rights over land, is one of form rather than of substance.

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(2) The only interests or charges in or over land which are capable of subsisting or of being conveyed or created at law are—

(*a*) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;

(*b*) A rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;

(*c*) A charge by way of legal mortgage;

(*d*) Land tax, tithe rentcharge, and any other similar charge on land which is not created by an instrument;

(*e*) Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge.

(3) All other estates, interests, and charges in or over land take effect as equitable interests.

(4) The estates, interests, and charges which under this section are authorised to subsist or to be conveyed or created at law are (when subsisting or conveyed or created at law) in this Act referred to as "legal estates," and have the same incidents as legal estates subsisting at the commencement of this Act; and the owner of a legal estate is referred to as "an estate owner," and his legal estate is referred to as his estate.

(5) A legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done before the commencement of this Act.

(6) A legal estate is not capable of subsisting or of being created in an undivided share in land or of being held by an infant.

(7) Every power of appointment over, or power to convey or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of this Act (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf), operates only in equity.

(8) Estates, interests, and charges in or over land which are not legal estates are in this Act referred to as "equitable interests," and powers which by this Act are to operate in equity only are in this Act referred to as "equitable powers."

(9) The provisions in any statute or other instrument requiring land to be conveyed to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal estate authorised by this Act which may be required) be conveyed to a person of full age upon the requisite trusts.

(10) The repeal of the Statute of Uses (as amended) does not affect the operation thereof in regard to dealings taking effect before the commencement of this Act.

The effect of this section obviously is to remove from the category of "legal estates," *as authorised by this section*, (1) all

estates in land *not so authorised*, which immediately before the commencement of the Act were subsisting or capable of taking effect as "legal estates" *under the law as then in force; e.g.*, an estate in fee simple *in remainder*, a rentcharge *in remainder*, and (*whether in possession or remainder*) an estate for life or an estate tail; and (2) any estate so subsisting, even if otherwise an *authorised* legal estate, if held by tenants in common in undivided shares or by an infant.

Conversion of certain existing legal estates into equitable interests.

To give effect to this new classification as regards estates or interests in land subsisting at the commencement of the Property Act, Part I. of the Transitional Provisions (*c*) contained in the First Schedule to that Act provides that all estates, interests and charges in or over land, including fees determinable whether by limitation or condition, which immediately before the commencement of the Act were estates, interests or charges, subsisting at law, or capable of taking effect as such, but which by virtue of Part I. (*d*) of the Act are not capable of taking effect as legal estates, shall as from the commencement of the Act be converted into equitable interests, and shall not fail by reason of being so converted into equitable interests either in the land or in the proceeds of sale thereof, nor shall the priority of any such estate, charge or interest over other equitable interests be affected.

Section ii.—*Meaning of Expressions used in the "Primary Section."*

"Land."

"Land."

The definition of "land" in the Property Act (*e*) differs from those in the Conveyancing Act, 1881 (*f*), and in the Settled Land Act, 1882 (*g*), respectively, in that (1) it expressly excludes, while they expressly include, an undivided share in land; (2) it expressly contemplates, as possible sub-

(*c*) Above, p. 23.
(*d*) Part I. of the Act comprises sects. 1 to 39 (inclusive), and is headed "General Principles as to Legal Estates, Equitable Interests and Powers."
(*e*) See Table of Definitions, above, Part I., Chap. VII.
(*f*) Sect. 2 (ii).
(*g*) Sect. 2 (10) (i).

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jects of separate ownership, the surface of land, the mines and minerals, and one part of a building divided horizontally, vertically, or otherwise from another part, such as a flat or a cellar; and (3) it expands a general reference to "incorporeal hereditaments" into the enumeration of "a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land."

The following section of the Property Act should be read in connection with the definition of "land" in the same Act:—

Provisions of Act to apply to incorporeal hereditaments.

201.—(1) The provisions of this Act relating to freehold land apply to manors, reputed manors, lordships, advowsons, tithe and perpetual rentcharges, and other incorporeal hereditaments, subject only to the qualifications necessarily arising by reason of the inherent nature of the hereditament affected.

61 & 62 Vict. c. 48.

(2) This Act does not affect the special restrictions imposed on dealings with advowsons by the Benefices Act, 1898, or any other statute or measure, nor affect the limitation of, or authorise any disposition to be made of, a title or dignity of honour which in its nature is inalienable.

(3) This section takes effect subject to the express provisions of this Act relating to undivided shares.

"Estate in Fee Simple Absolute in Possession."

"Estate in fee simple absolute in possession."

There is no definition of this expression in any of the Consolidation Acts; but "estate in fee simple in possession" obviously has the same meaning as under the old law. For sub-sect. (4) of this section provides that "legal estates" have the same incidents as legal estates subsisting at the commencement of the Act; and sub-sect. (5) provides that a "legal estate" may subsist concurrently with or subject to any other "legal estate" in the same land in like manner as it could have done before the commencement of the Act.

The word "absolute" appears to be used to denote an estate in fee simple in possession, which is not subject to any executory limitation, gift or disposition over, restraint on anticipation, charge or other incident, which would constitute the land "settled land" (*h*); or, more generally, an estate in fee simple in possession, which the owner thereof has or, by acts the per-

(*h*) Sec S. L. Act, s. 1; below, p. 258.

formance of which rests with himself alone, can obtain the right to convey to a purchaser free from incumbrances (*i*). A fee simple which, by virtue of the Lands Clauses Acts, the School Sites Acts, or any similar statute, is liable to be divested, remains so liable, but is, for the purposes of the Property Act, a fee simple absolute; as is also a fee simple vested in a corporation which is liable to determine by reason of the dissolution of the corporation (*k*).

"Term of Years Absolute."

"Term of years absolute."

We have already seen (*l*) what is the definition of this expression as used in the Property Act, and that it has substantially the same meaning in all the other Acts in which it is used. It appears from this definition that not only ordinary leases for terms of years, but every kind of tenancy which gives to the tenant a defined interest, however short, in land (including, *e.g.*, the letting of a furnished house for a few weeks) is a "term of years absolute" and, as such, is a "legal estate," unless it purports to be created in an undivided share in land or to be vested in an infant.

The expression also obviously includes a term created by demise or sub-demise by way of mortgage for securing money or money's worth.

Again, a "term of years," as defined, may be a "term of years absolute," whether it is to take effect in possession or reversion.

In this connection it will be convenient to call attention to a change in the law in regard to reversionary leases.

Under the old law, when a lease was made, the lessee, before entry (unless the lease took effect by virtue of the Statute of Uses), had no estate, but only a right to have the lands for the term by force of the lease, called in law an *interesse termini* (*m*).

(*i*) See Treatise, Vol. I., pp. 150, 151, and cases there cited.
(*k*) L. P. Act, s. 7 (1) (2).
(*l*) See Table of Definitions, above, Part I., Chap. VII.
(*m*) See Williams' R. P., 23rd ed., p. 551.

Part III. Chap. I.

It is now enacted as follows (*n*):—

Abolition of interesse termini, and as to reversionary leases and leases for lives.

149.—(1) The doctrine of interesse termini is hereby abolished.

(2) As from the commencement of this Act all terms of years absolute shall, whether the interest is created before or after such commencement, be capable of taking effect at law or in equity, according to the estate interest or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

(3) A term, at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void; but this subsection does not apply to any term taking effect in equity under a settlement, or created out of an equitable interest under a settlement, or under an equitable power for mortgage, indemnity or other like purposes.

(4) Nothing in subsections (1) and (2) of this section prejudicially affects the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or, as respects terms or interests created before the commencement of this Act, operates to vary any statutory or other obligations imposed in respect of such terms or interests.

(5) Nothing in this Act affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed.

The restriction imposed by sub-sect. (3) of this section and referred to in the definition of "term of years absolute" on the grant, and on contracts for the grant, of reversionary leases should be noted.

It will be seen that there is excluded from the definition of "term of years absolute" any term of years determinable with life or lives or with the cesser of a determinable life interest. The reason for this is that such a term of years is to take effect as a term of ninety years determinable in certain events (*o*).

"Easement, Right, or Privilege in or over Land."

"Easement, right, or privilege in or over land."

This expression, and the similar expression in the definition of "land," appears to be derived from sect. 62 (*p*) of the Conveyancing Act, 1881, which authorised the grant by way of

(*n*) L. P. Act, s. 149 (1) to (5). For the rest of this section, namely, sub-sect. (6), dealing with leases for lives, see above, p. 95.
(*o*) See above, p. 95.
(*p*) Repealed; see above, p. 17.

use of any "easement, right, liberty, or privilege in, over, or with respect to" freehold land, for an estate or interest not exceeding in duration the estate conveyed in the land (*q*).

Section iii.—*Abolition of Uses.*

The Statute of Uses (27 Hen. 8, c. 10) is repealed by and as from the commencement of the Property Act (*r*). The words ("as amended") in sub-sect. (10) of the "Primary Section" apparently refer to the above-mentioned sect. 62 of the Conveyancing Act, 1881.

Effect of the word "use" in future conveyances.

It seems clear that, in the case of a grant for valuable consideration of a "legal estate" in freehold land, executed after the commencement of the Property Act and expressed to be "unto and to the use" of the purchaser, his heirs and assigns, the words "and to the use of" would be, as they were under the old law (*s*), mere surplusage and the grant would operate at common law to pass the legal estate.

It is thought that, in any other case, an assurance executed after the commencement of the Act and purporting to create an estate or a series of estates in freehold land by means of a use or uses, would not fail, but would operate to create a corresponding equitable interest or corresponding equitable interests.

A similar result might ensue from an attempt to create by means of a use an easement, right, liberty, or privilege in, or over, or with respect to freehold land.

Omission of word "use" in future conveyances.

One result of the Statute of Uses was that if a grant were made "unto" A. and his heirs simply, instead of "unto and to the use of" A. and his heirs and there was no consideration for the grant, there was a resulting use to the grantor (*t*). Any such result, in the case of conveyances and deeds executed after the commencement of the Property Act, is obviated by sub-sect. (3) of sect. 60 of that Act. As that section and

(*q*) For the respective meanings in sect. 1 of the L. P. Act of "conveyed," "rentcharge," "charge by way of legal mortgage," "legal estates," "estate owner," "instrument," "legal mortgagee," "equitable interests," and "equitable powers," see the Table of Definitions, above, Part I., Chap. VII.

(*r*) L. P. Act, s. 207, and Seventh Schedule.

(*s*) See *Doe* d. *Lloyd* v. *Passingham*, 6 B. & C. 305, 317.

(*t*) See Williams' R. P., 23rd ed., pp. 182, 185.

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Construction of future conveyances.

also sect. 61 are of importance, as affecting the construction of instruments executed, made or coming into operation after the commencement of the Act, it is desirable to set them out at length.

They are as follows:—

Abolition of technicalities in regard to conveyances and deeds.

60.—(1) A conveyance of freehold land to any person without words of limitation, or any equivalent expression, shall pass to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

(2) A conveyance of freehold land to a corporation sole by his corporate designation without the word "successors" shall pass to the corporation the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

(3) In a voluntary conveyance a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee.

(4) The foregoing provisions of this section apply only to conveyances and deeds executed after the commencement of this Act:

Provided that in a deed executed after the thirty-first day of December, eighteen hundred and eighty-one, it is sufficient—

(*a*) In the limitation of an estate in fee simple, to use the words "in fee simple," without the word "heirs";

(*b*) In the limitation of an estate tail, to use the words "in tail" without the words "heirs of the body"; and

(*c*) In the limitation of an estate in tail male or in tail female, to use the words "in tail male" or "in tail female," as the case requires, without the words "heirs male of the body," or "heirs female of the body."

Construction of expressions used in deeds and other instruments.

61. In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after the commencement of this Act, unless the context otherwise requires—

(*a*) "Month" means calendar month;

(*b*) "Person" includes a corporation;

(*c*) The singular includes the plural and vice versâ;

(*d*) The masculine includes the feminine and vice versâ.

With reference to sub-sect. (2) of the above sect. 60, it may be called to mind that, in a conveyance of freehold land to a corporation *aggregate*, words of limitation have always been unnecessary to pass the fee simple.

The proviso to sub-sect. (4) re-enacts, or saves the operation of, sect. 51 (*u*) of the Conveyancing Act, 1881.

(*u*) Repealed; see above, p. 17.

CHAPTER II.

VESTING AND MERGER OF LEGAL ESTATES.

Section i.—*Satisfied Terms.*

Satisfied Terms Act, 1845.

The Satisfied Terms Act, 1845 (*a*), is repealed by the Property Act (*b*). Sect. 2 of the repealed Act provided that every term of years then subsisting or thereafter to be created becoming satisfied (*c*) after the 31st December, 1845, and which, either by express declaration or by construction of law, should after that day become attendant upon the inheritance or reversion of any land, should, immediately upon the same becoming so attendant, absolutely cease and determine as to the land upon the inheritance or reversion whereof such term should become attendant as aforesaid. Sect. 1 of the same Act provided that every satisfied term which on the 31st December, 1845, should be so attendant, should on that day absolutely cease and determine, but such term, if so attendant by express declaration, was to afford the same protection as if it had continued to subsist but had not been assigned or dealt with after that day.

The repealed Act did not apply to terms created out of leasehold land (*d*).

Sect. 2 of the repealed Act is re-enacted (in effect) by sub-sect. (1) of sect. 5 of the Property Act.

The latter section is as follows:—

Satisfied terms, whether created out of freehold or leasehold land to cease.

5.—(1) Where the purposes of a term of years created or limited at any time out of freehold land, become satisfied either before or after the commencement of this Act (whether or not that term either by express declaration or by construction of law becomes attendant upon

(*a*) Stat. 8 & 9 Vict. c. 112.
(*b*) L. P. Act, s. 207, and Seventh Schedule.
(*c*) As to when a term is satisfied, see *Andersen* v. *Pignet*, L. R. 8 Ch. 180.
(*d*) See *In re Moore and Hulm's Contract*, (1912) 2 Ch. 105.

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the freehold reversion) it shall merge in the reversion expectant thereon and shall cease accordingly.

(2) Where the purposes of a term of years created or limited, at any time, out of leasehold land, become satisfied after the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly.

(3) Where the purposes are satisfied only as respects part of the land comprised in a term, this section shall have effect as if a separate term had been created in regard to that part of the land.

It will be seen that sub-sect. (2) applies only to a term of years created out of leasehold land which becomes satisfied *after* the commencement of the Act.

A term so created which has become satisfied *before* the commencement of the Act is dealt with by paragraph 1 of Part II. (*e*) of the Transitional Provisions (*f*) contained in the First Schedule to the Property Act.

That paragraph is as follows:—

Merger of subsisting satisfied sub-terms.

1. Where the purposes of a term of years, created or limited out of leasehold land, are satisfied at the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly; but where the term was vested in the owner of the reversion, the merger and cesser shall take effect without prejudice to any protection which would have been afforded to the owner for the time being of that reversion had the term remained subsisting.

Where the purposes are satisfied only as respects part of the land comprised in a term, this provision has effect as if a separate term had been created in regard to that part of the land.

Section ii.—*Other cases of vesting of Legal Estates.*

Part II. of the same schedule deals with other cases in which there is to be an automatic merger or vesting of certain legal estates by virtue of the Property Act itself, on its coming into operation.

Thus paragraph 2 provides as follows:—

Merger of certain legal estates.

2. Where immediately after the commencement of this Act any owner of a legal estate is entitled, subject or not to the payment of the

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(*e*) This Part contains nine paragraphs, and is headed "Vesting of Legal Estates."

(*f*) Above, p. 23.

costs of tracing the title and of conveyance, to require any other legal estate in the same land to be surrendered, released or conveyed to him so as to merge or be extinguished, the last-mentioned estate shall by virtue of this Part of this Schedule be extinguished, but without prejudice to any protection which would have been afforded to him had that estate remained subsisting.

The first part of paragraph 3 is as follows:—

Vesting of legal estate in person "entitled to require" the same to be vested in him.

3. Where immediately after the commencement of this Act any person is entitled, subject or not to the payment of the costs of tracing the title and of conveyance, to require any legal estate (not vested in trustees for sale) to be conveyed to or otherwise vested in him, such legal estate shall, by virtue of this Part of this Schedule, vest in manner hereinafter provided (*g*).

This enactment does not apply to a legal estate vested in trustees for sale, the object of this exception being, no doubt, to preserve unimpaired the provisions of the Property Act in regard to "Dispositions on Trust for Sale" (*h*).

Nor does it apply to any of the cases mentioned in paragraph 7 of this Part of the Schedule (*i*).

Application of para. 3.

With these exceptions this enactment appears to be of general application. One necessary consequence of it appears to be that where immediately after the commencement of the Act a legal estate in land is vested in A. in such circumstances that he holds it in trust for B. and is bound to convey it to B. if B. should require him to do so, the legal estate will automatically vest in B.

Who is "entitled to require."

The following cases of persons entitled to require, or who are to be deemed to be entitled to require, a legal estate to be vested in them are specified in this Part of the Schedule:—

1. Enfranchised land.

1. The rest of paragraph 3 provides as follows:—

This paragraph shall (without prejudice to any claim, in respect of fines, fees, and other customary payments) apply to a person who, under a surrender or any disposition having the effect of a surrender, or under a covenant to surrender or otherwise, was, immediately before the commencement of this Act, entitled to require a legal customary estate of inheritance to be vested in him, or who, immediately after such commencement becomes entitled to enfranchised land.

(*g*) Namely, by para. 6; below, p. 108.
(*h*) Below, p. 166.
(*i*) Below, p. 109.

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It is suggested that this enactment is inconsistent with the provisions as to the vesting of enfranchised land contained in the Property Acts, 1922 and 1924 (*k*), and that, by virtue of section 202 (*l*) of the Property Act, such vesting will already have taken effect before that Act comes into operation, so that there will be nothing on which the enactment under consideration can operate.

2. Equitable interest capable of subsisting as a legal estate.

2. Paragraph 4 of Part II. of this Schedule is as follows:—

4. Any person who, immediately after the commencement of this Act, is entitled to an equitable interest capable of subsisting as a legal estate which has priority over any legal estate in the same land, shall be deemed to be entitled for the foregoing purposes to require a legal estate to be vested in him for an interest of a like nature not exceeding in extent or duration the equitable interest:

Provided that this paragraph shall not—

(*a*) apply where the equitable interest is capable of being overreached by virtue of a subsisting trust for sale or a settlement;

(*b*) operate to prevent such person from acquiring any other legal estate under this Part of this Schedule to which he may be entitled.

In the Property Act, as we have seen (*m*), an equitable interest "capable of subsisting as a legal estate" means such as could validly subsist or be created as a legal estate.

3. Tenant for life, statutory owner or personal representative.

3. Paragraph 5 of this Part of the Schedule is as follows:—

5. For the purposes of this Part of this Schedule, a tenant for life, statutory owner or personal representative, shall be deemed to be entitled to require to be vested in him any legal estate in settled land (whether or not vested in the Crown) which he is, by the Settled Land Act, 1925, given power to convey.

The reference here appears to be to sect. 72 of the Settled Land Act (*n*).

Mode of vesting.

Paragraph 6 of this Part of the Schedule is as follows:—

6. Under the provisions of this Part of this Schedule, the legal estate affected (namely, any estate which a person is entitled to require to be vested in him as aforesaid) shall vest as follows:—

(*a*) Where at the commencement of this Act land is subject to a mortgage (not being an equitable charge unsecured by any

(*k*) Above, pp. 70 *et seq.* (*l*) Above, p. 54.
(*m*) See Table of Definitions, above, Part I., Chap. VII.
(*n*) Below, p. 326.

estate), the legal estate affected shall vest in accordance with the provisions relating to mortgages contained in this Schedule (*o*);

(*b*) Where the land is at the commencement or by virtue of this Act or any Act coming into operation at the same time subject or is by virtue of any statute made subject to a trust for sale, the legal estate affected shall vest in the trustees for sale (including personal representatives holding land on trust for sale) but subject to any mortgage term subsisting or created by this Act;

(*c*) Where at the commencement of this Act or by virtue of any statute coming into operation at the same time the land is settled land, the legal estate affected shall vest in the tenant for life or statutory owner entitled under the Settled Land Act, 1925, to require a vesting deed to be executed in his favour, or in the personal representative, if any, in whom the land may be vested or the Public Trustee, as the case may require but subject to any mortgage term subsisting or created by this Act;

(*d*) In any case to which the foregoing sub-paragraphs do not apply the legal estate affected shall vest in the person of full age who, immediately after the commencement of this Act, is entitled (subject or not to the payment of costs and any customary payments) to require the legal estate to be vested in him, but subject to any mortgage term subsisting or created by this Act.

Paragraphs 7, 8 and 9 of this Part of the Schedule are as follows:—

Savings.

7. Nothing in this Part of this Schedule shall operate—

(*a*) To vest in a mortgagee of a term of years absolute any nominal leasehold reversion which is held in trust for him subject to redemption; or

(*b*) To vest in a mortgagee any legal estate except a term of years absolute; or

(*c*) To vest in a person entitled to a leasehold interest, as respects such interest, any legal estate except a term of years absolute; or

(*d*) To vest in a person entitled to a rentcharge (either perpetual or held for a term of years absolute) as respects such rentcharge, any legal estate except a legal estate in the rentcharge; or

(*e*) To vest in a person entitled to an easement, right or privilege with reference thereto, any legal estate except a legal estate in the easement, right or privilege; or

(*o*) Namely, in Parts VII. and VII.; below, p. 111.

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(*f*) To vest any legal estate in a person for an undivided share; or

(*g*) To vest any legal estate in an infant; or

(*h*) To affect prejudicially the priority of any mortgage or other incumbrance or interest subsisting at the commencement of this Act; or

(*i*) To render invalid any limitation or trust which would have been capable of taking effect as an equitable limitation or trust; or

(*j*) To vest in a purchaser or his personal representatives any legal estate which he has contracted to acquire and in regard to which a contract, including an agreement to create a legal mortgage, is pending at the commencement of this Act, although the consideration may have been paid or satisfied and the title accepted, or to render unnecessary the conveyance of such estate; or

(*k*) To vest in the managing trustees or committee of management of a charity any legal estate vested in the Official Trustee of Charity Lands; or

(*l*) To vest in any person any legal estate which failed to pass to him by reason of his omission to be registered as proprietor under the Land Transfer Acts, 1875 and 1897, until brought into operation by virtue of the Land Registration Act, 1925.

Incidents of legal estate acquired.

8. Any legal estate acquired by virtue of this Part of this Schedule shall be held upon the trusts and subject to the powers, provisions, rents, covenants, conditions, rights of redemption (as respects terms of years absolute) and other rights, burdens and obligations, if any, upon or subject to which the estate acquired ought to be held.

Stamp duty.

9. No stamp duty shall become payable by reason only of any vesting surrender or release effected by this Schedule.

CHAPTER III.

MORTGAGES (*a*).

Section i.—*Operation of Mortgages.*

As from the commencement of the Property Act, and apart from the provisions in relation to charges by way of legal mortgage and statutory charges, a mortgage of freehold land can take effect at law only as a demise for a term of years absolute, and a mortgage of leasehold land can take effect only as a mortgage by sub-demise for a term less by one day at least than the term held by the mortgagor. The object of these changes is to secure that the legal estate, whether freehold or leasehold, which is the subject of the mortgage, shall be vested in the person or persons in whom the same would be vested if the land were unincumbered, and shall not vest in the mortgagee subject to redemption.

Section ii.—*Mortgages existing at the commencement of the Act.*

These changes in regard to mortgages so existing are effected by Parts VII. and VIII. of the Transitional Provisions (*b*) contained in the First Schedule to the Property Act.

Part VII. of this Schedule is as follows:—

Conversion of existing freehold mortgages into mortgages by demise.

1. All land, which immediately before the commencement of this Act, was vested in a first or only mortgagee for an estate in fee simple in possession, whether legal or equitable, shall, from and after the

(*a*) The enactments referred to in this Chapter are contained in Part III. of the Property Act. This Part of the Act is headed "Mortgages, Rentcharges, and Powers of Attorney," and comprises sects. 85 to 122 (inclusive), whereof sects. 85 to 120 (inclusive) relate to "Mortgages," sects. 121 and 122 to "Rentcharges," and sects. 123 to 129 (inclusive) to "Powers of Attorney."

(*b*) Above, p. 23.

commencement of this Act, vest in the first or only mortgagee for a term of three thousand years from such commencement, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple.

2. All land, which immediately before the commencement of this Act, was vested in a second or subsequent mortgagee for an estate in fee simple in possession, whether legal or equitable, shall, from and after the commencement of this Act, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee, without impeachment of waste, but subject to the term or terms vested in such first or other prior mortgagee and subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple.

3. The estate in fee simple which, immediately before the commencement of this Act, was vested in any such mortgagee shall, from and after such commencement, vest in the mortgagor or tenant for life, statutory owner, trustee for sale, personal representative, or other person of full age who, if all money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged at the commencement of this Act, would have been entitled to have the fee simple conveyed to him, but subject to any mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

4. If a sub-mortgage by conveyance of the fee simple is subsisting immediately before the commencement of this Act, the principal mortgagee shall take the principal term created by paragraphs 1 or 2 of this Part of this Schedule (as the case may require) and the sub-mortgagee shall take a derivative term less by one day than the term so created, without impeachment of waste, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.

5. This Part of this Schedule applies to land enfranchised by statute as well as to land which was freehold before the commencement of this Act, and (save where expressly excepted) whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is made by way of trust for sale or otherwise.

6. A mortgage affecting a legal estate made before the commencement of this Act which is not protected, either by a deposit of documents of title relating to the legal estate or by registration as a land charge, shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest.

This paragraph does not apply to mortgages or charges registered or protected under the Land Registration Act, 1925, or to mortgages or charges registered in a local deeds register.

7. Nothing in this Part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage.

8. This Part of this Schedule does not apply unless a right of redemption is subsisting immediately before the commencement of this Act.

Part VIII. of the Schedule is as follows:—

Conversion of existing leasehold mortgages into mortgages by demise.

1. All leasehold land, which immediately before the commencement of this Act, was vested in a first or only mortgagee by way of assignment of a term of years absolute shall, from and after the commencement of this Act, vest in the first or only mortgagee for a term equal to the term assigned by the mortgage, less the last ten days thereof, but subject to a provision for cesser corresponding to the right of redemption which at such commencement was subsisting with respect to the term assigned.

2. All leasehold land, which immediately before the commencement of this Act, was vested in a second or subsequent mortgagee by way of assignment of a term of years absolute (whether legal or equitable) shall, from and after the commencement of this Act, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term assigned by the mortgage, but subject to the term or terms vested in such first or other prior mortgagee, and subject to a provision for cesser corresponding to the right of redemption which, at the commencement of this Act, was subsisting with respect to the term assigned by the mortgage.

3. The term of years absolute which was assigned by any such mortgage shall, from and after the commencement of this Act, vest in the mortgagor or tenant for life, statutory owner, trustee for sale, personal representative, or other person of full age who, if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Act, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

4. If a sub-mortgage by assignment of a term is subsisting immediately before the commencement of this Act, the principal mortgagee shall take the principal derivative term created by paragraphs 1 or 2 of this Part of this Schedule or the derivative term created by his mortgage (as the case may require), and the sub-mortgagee shall take a derivative term less by one day than the term so vested in the principal mortgagee, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.

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5. A mortgage affecting a legal estate made before the commencement of this Act which is not protected, either by a deposit of documents of title relating to the legal estate or by registration as a land charge shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest.

This paragraph does not apply to mortgages or charges registered or protected under the Land Registration Act, 1925, or to mortgages or charges registered in a local deeds register.

6. This Part of this Schedule applies to perpetually renewable leaseholds, and to leaseholds for lives, which are by statute converted into long terms, with the following variations, namely:—

(*a*) The term to be taken by a first or only mortgagee shall be ten days less than the term created by such statute:

(*b*) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term created by such statute:

(*c*) The term created by such statute shall, from and after the commencement of this Act, vest in the mortgagor or tenant for life, statutory owner, trustee for sale, personal representative, or other person of full age, who if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Act, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

7. This Part of this Schedule applies (save where expressly excepted) whether or not the leasehold land is registered under the Land Registration Act, 1925, or the mortgage is made by way of trust for sale or otherwise.

8. Nothing in this Part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage, but this Part of this Schedule does not apply unless a right of redemption is subsisting at the commencement of this Act.

Existing mortgages, when not affected.

1. Right of redemption barred or extinguished.

It will be noticed that neither Part VII. nor Part VIII. of the Schedule applies unless a right of redemption is subsisting at the commencement of the Act. If, therefore, at such commencement an estate in fee simple or a term of years created by a lease, the whole term of which was assigned by the lessee

by way of mortgage, be vested in a mortgagee free from any right of redemption by reason of the same having been barred under the Statutes of Limitation or extinguished by an order for foreclosure absolute or otherwise, the estate or term so vested will be unaffected.

2. Mortgage by subdemise.

It will be seen also that Part VIII. of the Schedule has no application to a mortgage of leasehold land effected by subdemise.

Section iii.—*Mortgages created after the commencement of the Act.*

A legal mortgage of freehold land created after the commencement of the Act must be effected in the manner prescribed by sub-sect. (1) of sect. 85 of the Act, or if purporting to be created *otherwise* so as to give the mortgagee an estate in fee simple, will take effect as provided by sub-sect. (2) of the same section, which is as follows:—

Mode of mortgaging freeholds.

85.—(1) A mortgage of an estate in fee simple shall only be capable of being effected at law either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage:

Provided that a first mortgagee shall have the same right to the possession of documents as if his security included the fee simple.

(2) Any purported conveyance of an estate in fee simple by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a demise of the land to the mortgagee for a term of years absolute, without impeachment for waste, but subject to cesser on redemption, in manner following, namely:—

(*a*) A first or only mortgagee shall take a term of three thousand years from the date of the mortgage:

(*b*) A second or subsequent mortgagee shall take a term (commencing from the date of the mortgage) one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee:

and, in this subsection, any such purported conveyance as aforesaid includes an absolute conveyance with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the fee simple in a mortgagee subject to redemption.

(3) This section applies whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is expressed to be made by way of trust for sale or otherwise.

15 Geo. 5, c. 21.

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(4) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage or to lend money on mortgage of an estate in fee simple shall be construed as a power to mortgage the estate for a term of years absolute, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.

Length of mortgage term.

It will be noticed that under sub-sect. (1) the length of the term is left as a matter to be arranged between the mortgagor and the mortgagee, and that it is only where sub-sect. (2) comes into operation that the length of the term is prescribed.

The means of effecting a legal mortgage of leasehold land, created after the commencement of the Act, is prescribed by sect. 86 of the Act, which is as follows:—

Mode of mortgaging leaseholds.

86.—(1) A mortgage of a term of years absolute shall only be capable of being effected at law either by a subdemise for a term of years absolute, less by one day at least than the term vested in the mortgagor, and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage; and where a licence to subdemise by way of mortgage is required, such licence shall not be unreasonably refused:

Provided that a first mortgagee shall have the same right to the possession of documents as if his security had been effected by assignment.

(2) Any purported assignment of a term of years absolute by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a subdemise of the leasehold land to the mortgagee for a term of years absolute, but subject to cesser on redemption, in manner following, namely:—

(*a*) The term to be taken by a first or only mortgagee shall be ten days less than the term expressed to be assigned:

(*b*) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned:

and, in this subsection, any such purported assignment as aforesaid includes an absolute assignment with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the term of the mortgagor in a mortgagee subject to redemption.

(3) This section applies whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is made by way of sub-mortgage of a term of years absolute, or is expressed to be by way of trust for sale or otherwise.

(4) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage for or to lend money on mortgage of a term of years absolute by way of assignment shall be construed as a power to mortgage the term by subdemise for a term of years absolute or by a charge by way of legal mortgage, or to lend on such security.

Licence to subdemise.

It will be noticed that sub-sect. (1) of this section introduces a change in the law by providing that where a licence to subdemise by way of mortgage is required, such licence shall not be unreasonably refused.

Section iv.—*Charge by way of legal Mortgage.*

A new form of security, described as "a charge by way of legal mortgage," is introduced by the Property Act.

The mode of effecting and the operation of this form of security are prescribed by sect. 87 of the Act as follows:—

Charges by way of legal mortgage.

87.—(1) Where a legal mortgage of land is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if—

(*a*) where the mortgage is a mortgage of an estate in fee simple, a mortgage term for three thousand years without impeachment of waste had been thereby created in favour of the mortgagee; and

(*b*) where the mortgage is a mortgage of a term of years absolute, a sub-term less by one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee.

(2) Where an estate vested in a mortgagee immediately before the commencement of this Act has by virtue of this Act been converted into a term of years absolute or sub-term, the mortgagee may, by a declaration in writing to that effect signed by him, convert the mortgage into a charge by way of legal mortgage, and in that case the mortgage term shall be extinguished in the inheritance or in the head term as the case may be, and the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if the mortgage term or sub-term had remained subsisting.

The power conferred by this subsection may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative.

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(3) Such declaration shall not affect the priority of the mortgagee or his right to retain possession of documents, nor affect his title to or right over any fixtures or chattels personal comprised in the mortgage.

Authorised form of charge by way of legal mortgage.

The Fifth Schedule to the Property Act contains forms of instruments, being forms authorised by sub-sect. (1) of sect. 206 of the Act. That sub-section provides that instruments in the form of, and using the expressions in the forms given in the Fifth Schedule to the Act, or in the like form, or using expressions to the like effect, shall, in regard to form and expression, be sufficient. Form No. 1 is of "charge by way of legal mortgage" (*c*).

This Form No. 1 is as follows:—

This Legal Charge is made [&c.] between *A.* of [&c.] of the one part and *B.* of [&c.] of the other part.

[*Recite the title of A. to the freeholds or leaseholds in the Schedule and agreement for the loan by B.*]

Now in consideration of the sum of pounds now paid by *B.* to *A.* (the receipt &c.) this Deed witnesseth as follows:—

1. *A.* hereby covenants with *B.* to pay [*Add the requisite covenant to pay principal and interest*].

2. *A.* as Beneficial Owner hereby charges by way of legal mortgage All and Singular the property mentioned in the Schedule hereto with the payment to *B.* of the principal money, interest, and other money hereby covenanted to be paid by *A.*

3. [*Add covenant to insure buildings and any other provisions desired.*]

In witness [&c.] [*Add Schedule*].

Note.—*B.* will be in the same position as if a mortgage had been effected by a demise of freeholds or a subdemise of leaseholds.

Other authorised forms.

(*c*) The other authorised forms in the same Schedule are as follows:—No. 2. "Further Charge by Way of Legal Mortgage." No. 3. "Conveyance on Sale, Legal Chargees or Mortgagees Concurring." No. 4. "Conveyance on Sale by Legal Chargees or Mortgagees." No. 5. "Conveyance by Personal Representatives of a Fee Simple, reserving thereout a Term of Years Absolute for giving Legal Effect to a Mortgage." No. 6. "Conveyance on Sale reserving Minerals and Right to Work and a Perpetual Rentcharge." No. 7. "Deed for confirming Legal Estates which have not been validly created." No. 8. "Assent by Personal Representative in Favour of a Person absolutely entitled Free from Incumbrances." No. 9. "Assent by Personal Representatives in Favour of Trustees for Sale."

Section v.—*Transfers and Reconveyances.*

Authorised forms of transfer and receipt.

Sects. 114 and 115 of the Property Act introduce two further authorised forms of instruments, namely, those contained in the Third Schedule to the Act. That Schedule is as follows:—

THIRD SCHEDULE.

Sections 114 and 115.

FORMS OF TRANSFER AND DISCHARGE OF MORTGAGES.

FORM No. 1.

FORM OF TRANSFER OF MORTGAGE.

This Transfer of Mortgage made the day of 19 , between *M.* of [&c.] of the one part and *T.* of [&c.] of the other part, supplemental to a Mortgage dated [&c.], and made between [&c.], and to a Further Charge dated [&c.], and made between [&c.] affecting &c. (*here state short particulars of the mortgaged property*).

WITNESSETH that in consideration of the sums of £ and £ (for interest) now paid by *T.* to *M.*, being the respective amounts of the mortgage money and interest owing in respect of the said mortgage and further charge (the receipt of which sums *M.* hereby acknowledges) *M.*, as mortgagee, hereby conveys and transfers to *T.* the benefit of the said mortgage and further charge.

In witness, &c.

FORM No. 2.

FORM OF RECEIPT ON DISCHARGE OF A MORTGAGE.

I, *A.B.*, of [&c.] hereby acknowledge that I have this day of 19 , received the sum of £ representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written [annexed] mortgage [and by a further charge dated, &c., *or otherwise as required*] together with all interest and costs, the payment having been made by *C.D.* of [&c.] and *E.F.* of [&c.].

As witness, &c.

Note.—If the persons paying are not entitled to the equity of redemption state that they are paying the money out of a fund applicable to the discharge of the mortgage.

Sect. 114 of the Act is as follows:—

Transfers of mortgages.

114.—(1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee—

(*a*) the right to demand, sue for, recover, and give receipts for, the mortgage money or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon; and

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(*b*) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and

(*c*) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting.

(2) In this section "transferee" includes his personal representatives and assigns.

(3) A transfer of mortgage may be made in the form contained in the Third Schedule to this Act with such variations and additions, if any, as the circumstances may require.

(4) This section applies, whether the mortgage transferred was made before or after the commencement of this Act, but applies only to transfers made after the commencement of this Act.

(5) This section does not extend to a transfer of a bill of sale of chattels by way of security.

It is thought that this section does not apply to the transfer of a charge by way of legal mortgage. If this is so, there is no prescribed or specially authorised form of transfer of such a charge.

Sect. 115, on the other hand, expressly extends to a charge by way of legal mortgage. That section is as follows:—

Reconveyances of mortgages by endorsed receipts.

115.—(1) A receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a receipt for the mortgage money shall operate, without any reconveyance, surrender, or release—

(*a*) Where a mortgage takes effect by demise or subdemise, as a surrender of the term, so as to determine the term or merge the same in the reversion immediately expectant thereon;

(*b*) Where the mortgage does not take effect by demise or subdemise, as a reconveyance thereof to the extent of the interest which is the subject matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption;

and in either case, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested.

(2) Provided that, where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of

redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him; unless—

(*a*) it is otherwise expressly provided; or

(*b*) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.

(3) Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer; and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.

(4) This section does not affect the right of any person to require a reassignment, surrender, release, or transfer to be executed in lieu of a receipt.

(5) A receipt may be given in the form contained in the Third Schedule to this Act, with such variations and additions, if any, as may be deemed expedient; and where it takes effect under this section, it shall (subject as hereinafter provided) be liable to the same stamp duty as if it were a reconveyance under seal.

(6) In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee, subject to any interest which is paramount to the mortgage.

(7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient for the purposes of this section, if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.

(8) This section applies to the discharge of a charge by way of legal mortgage, and to the discharge of a mortgage, whether made by way of statutory mortgage or not, executed before or after the commencement of this Act, but only as respects discharges effected after such commencement.

(9) The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a building, friendly, industrial or provident society) apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society, but nothing in this section shall render a receipt given by or on behalf of any such society liable to any stamp duty which would not have been otherwise payable.

(10) This section does not apply to the discharge of a charge or incumbrance registered under the Land Registration Act, 1925.

(11) In this section "mortgaged property" means the property remaining subject to the mortgage at the date of the receipt.

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Sect. 116 provides as follows:—

Cesser of mortgage terms.

116. Without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise, a mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease.

Section vi.—*Statutory Mortgages.*

Sects. 117 to 120 (inclusive) of the Property Act contain provisions relating to statutory mortgages. These sections replace sects. 26 to 29 (inclusive) of the Conveyancing Act, 1881.

Forms of statutory legal charges.

Sect. 117 provides by sub-sect. (1) that, as a special form of charge by way of legal mortgage, a mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in one of the forms (Nos. 1 or 4) set out in the Fourth Schedule to the Act, with such variations and additions, if any, as circumstances may require, and if so made the provisions of this section shall apply thereto.

By sub-sect. (2) there shall be deemed to be included, and there shall by virtue of the Act be implied, in such a mortgage deed, first, a covenant to the effect stated in this sub-section for payment of principal and interest, and, secondly, a provision to the effect stated in this sub-section for discharge or transfer of the mortgage on payment of principal and interest on the stated day. This sub-section is to apply, with some modification, to a mortgage made under sect. 26 of the Conveyancing Act, 1881.

Forms of statutory transfers of legal charges.

Sect. 118 (*d*) provides by sub-sect. (1) that a transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of three forms (Nos. 2, 3 or 4) set out in the Fourth Schedule to the Act as may be appropriate to the case, with such variations and additions, if any, as circumstances may require, and if so made the provisions of this section shall

(*d*) This section (see sub-sect. (5)) applies to the transfer of a statutory mortgage created under any enactment replaced by the L. P. Act, that is, under sect. 26 of the C. A. 1881.

apply thereto; by sub-sect. (2) that, in whichever of those three forms the deed of transfer is made, it shall have effect as stated in this sub-section; by sub-sect. (3) what covenant is to be implied where a covenantor joins in the deed of transfer; and by sub-sect. (4) what is to be the operation of the deed of transfer if made in the Form No. 4.

Sects. 119 and 120 are as follows:—

Implied covenants, joint and several. [C. A. 1881, s. 28.]

119. [In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey] or charge [as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him].

Form of discharge of statutory mortgage or charge.

120. A statutory mortgage may be surrendered or discharged by a receipt in the form (No. 5) set out in the Fourth Schedule to this Act with such variations and additions, if any, as circumstances may require.

Section vii.—*Realisation of Mortgages.*

Sects. 88 and 89 of the Property Act introduce new provisions designed to place a mortgagee who "realises" his mortgage in the same position, in the case of a mortgage of freehold land, as if the mortgage had been a mortgage of the fee simple instead of, as under the Act it must be, a mortgage by demise or operating as such; and, in the case of a mortgage of leasehold land, as if the mortgage had been a mortgage by assignment instead of, as under the Act it must be, a mortgage by sub-demise or operating as such. In these sections, as will be seen, "realisation" includes the three cases of sale, foreclosure, and acquisition of title under the Statutes of Limitation.

Sect. 88 is as follows:—

Realisation of freehold mortgages.

88.—(1) Where an estate in fee simple has been mortgaged by the creation of a term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—

(*a*) the conveyance by him shall operate to vest in the purchaser the fee simple in the land conveyed subject to any legal

mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon;

(*b*) the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charges shall merge or be extinguished as respects the land conveyed;

and such conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the fee simple in him (subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured), and thereupon the mortgage term, if any, shall thereby be merged in the fee simple, and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall thereupon be extinguished.

(3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may enlarge the mortgage term into a fee simple under the statutory power for that purpose discharged from any legal mortgage affected by the title so acquired, or in the case of a chargee by way of legal mortgage may by deed declare that the fee simple is vested in him discharged as aforesaid, and the same shall vest accordingly.

(4) Where the mortgage includes fixtures or chattels personal any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

(5) In the case of a sub-mortgage by subdemise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term, if any, created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid, and to enable the sub-mortgagee to convey the fee simple or acquire it by foreclosure, enlargement, or otherwise as aforesaid.

(6) This section applies to a mortgage whether created before or after the commencement of this Act, and to a mortgage term created by this Act, but does not operate to confer a better title to the fee simple than would have been acquired if the same had been conveyed by the mortgage (being a valid mortgage) and the restrictions imposed by this Act in regard to the effect and creation of mortgages were not in force, and all prior mortgages (if any) not being merely equitable charges had been created by demise or by charge by way of legal mortgage.

The reference in sub-sect. (3) of this section to "the statutory power for that purpose" is to sect. 153 of the Property Act, which section (*e*) re-enacts, with certain amendments,

(*e*) Below, p. 233.

sect. 65 of the Conveyancing Act, 1881, as amended by sect. 11 of the Conveyancing Act, 1882.

Sect. 89 of the Property Act is as follows:—

Realisation of leasehold mortgages.

89.—(1) Where a term of years absolute has been mortgaged by the creation of another term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale,—

(*a*) the conveyance by him shall operate to convey to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the court) the leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon

(*b*) the mortgage term, or the charge by way of legal mortgage and any subsequent mortgage term or charge, shall merge in such leasehold reversion or be extinguished unless excepted as aforesaid;

and such conveyance may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested.

Where a licence to assign is required on a sale by a mortgagee, such licence shall not be unreasonably refused.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall, unless it otherwise provides, operate (without giving rise to a forfeiture for want of a licence to assign) to vest the leasehold reversion affected by the mortgage and any subsequent mortgage term in him, subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured, and thereupon the mortgage term and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall, subject to any express provision to the contrary contained in the order, merge in such leasehold reversion or be extinguished.

(3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may by deed declare that the leasehold reversion affected by the mortgage and any mortgage term affected by the title so acquired shall vest in him, free from any right of redemption which is barred, and the same shall (without giving rise to a forfeiture for want of a licence to assign) vest accordingly, and thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired shall, subject to any express provision to the contrary contained in the deed, merge in such leasehold reversion or be extinguished.

(4) Where the mortgage includes fixtures or chattels personal, any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

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(5) In the case of a sub-mortgage by subdemise of a term (less a nominal period) itself limited out of a leasehold reversion, the foregoing provisions of this section shall operate as if the derivative term created by the sub-mortgage had been limited out of the leasehold reversion, and so as (subject as aforesaid) to merge the principal mortgage term therein as well as the derivative term created by the sub-mortgage and to enable the sub-mortgagee to convey the leasehold reversion or acquire it by foreclosure, vesting, or otherwise as aforesaid.

(6) This section takes effect without prejudice to any incumbrance or trust affecting the leasehold reversion which has priority over the mortgage in right of which the sale, foreclosure, or title is made or acquired, and applies to a mortgage whether executed before or after the commencement of this Act, and to a mortgage term created by this Act, but does not apply where the mortgage term does not comprise the whole of the land included in the leasehold reversion unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land affected, or the rent is of no money value or no rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected.

Contracts for sale by mortgagee, effect of.

With this section and with sect. 88 should be read sub-sect. (4) (i) of sect. 42 (*f*) of the Property Act, which provides that if the subject-matter of any contract for the sale or exchange of land is a mortgage term and the vendor has power to convey the fee simple in the land, or, in the case of a mortgage of a term of years absolute, the leasehold reversion affected by the mortgage, the contract shall be deemed to extend to the fee simple in the land or such leasehold reversion. This sub-section appears to be imperative and not capable of modification by express stipulation in the contract (*g*).

The question whether or not the leasehold reversion is to vest in the purchaser on the completion of the contract is one of practical importance; for, if it so vests, he will become directly liable to the lessor for the rent reserved by the lease and under the covenants by the lessee and conditions therein contained. It is for this reason, perhaps, that the bracketed words ("unless expressly excepted with the leave of the Court") have been introduced into sub-sect. (1) (a) of sect. 89;

(*f*) Below, p. 140.

(*g*) But this section (42) does not affect the right of a mortgagee of leasehold land to sell his mortgage term only if he is unable to convey or vest the leasehold reversion expectant thereon: see sub-sect. (5).

but no indication appears to be afforded of the time when, or the manner in which, application to the Court is to be made, nor of the grounds on which the Court may relieve the purchaser from his contractual obligation to take an assignment of the leasehold reversion.

Sect. 90 of the Property Act is as follows:—

Realisation of equitable charges by the Court.

90.—(1) Where an order for sale is made by the Court in reference to an equitable mortgage on land (not secured by a legal term of years absolute or by a charge by way of legal mortgage) the Court may, in favour of a purchaser, make a vesting order conveying the land or may appoint a person to convey the land or create and vest in the mortgagee a legal term of years absolute to enable him to carry out the sale, as the case may require, in like manner as if the mortgage had been created by deed by way of legal mortgage pursuant to this Act, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.

(2) This section applies to equitable mortgages made or arising before or after the commencement of this Act, but not to a mortgage which has been over-reached under the powers conferred by this Act or otherwise.

Section viii.—*Tacking and Priorities.*

There are several references in the treatise to the doctrine of tacking as it existed prior to the commencement of the Property Act (*h*).

By the following section of that Act the right to tack is abolished, save as therein mentioned:—

Tacking and further advances.

94.—(1) After the commencement of this Act, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

(a) if an arrangement has been made to that effect with the subsequent mortgagees; or

(b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or

(c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances.

This subsection applies whether or not the prior mortgage was made expressly for securing further advances.

(*h*) See the Index to the Treatise, Vol. II., p. 1510, *sub voce* "Tacking."

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(2) In relation to the making of further advances after the commencement of this Act a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered as a land charge or in a local deeds registry, if it was not so registered at the date of the original advance or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

This subsection only applies where the prior mortgage was made expressly for securing a current account or other further advances.

(3) Save in regard to the making of further advances as aforesaid, the right to tack is hereby abolished:

Provided that nothing in this Act shall affect any priority acquired before the commencement of this Act by tacking, or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer.

(4) This section applies to mortgages of land made before or after the commencement of this Act, but not to charges registered under the Land Registration Act, 1925, or any enactment replaced by that Act.

This section should be read in connection with the provisions of the Property Act relating to "notice" (*i*) and registration in a local deeds registry (*k*), and with the provisions of the Land Charges Act relating to the registration of "puisne mortgages" (*l*).

Construction of L. P. Act, s. 94.

The concluding words of sub-sect. (1) of sect. 94 of the Property Act, defining the application of that sub-section, appear to be inconsistent with paragraph (c) of the same sub-section; for, if the prior mortgage imposes an obligation to make further advance, it would seem to follow that the prior mortgage must have been "made expressly for securing further advances."

The words ("if any") in sub-sect. (2) suggest that in a case to which the sub-section applies, namely, where the prior mortgage was made expressly for securing a current account or other further advances, the mortgagee will, possibly, not make a search when making a further advance. If he does, he will be affected with notice of any mortgage registered when such search was made. If he does not, he will be affected with notice of any mortgage registered at the date of the original advance or when the last or only search (if any) was made, whichever last happened. Apparently the sub-section leaves untouched the question of the effect of notice derived otherwise than from the fact of registration.

(*i*) Below, p. 198. (*k*) Below, p. 415. (*l*) Below, p. 407.

The priorities *inter se* of "puisne mortgages" are regulated by the following section of the Property Act:—

Priorities as between puisne mortgages.

97. Every mortgage affecting a legal estate in land made after the commencement of this Act, whether legal or equitable (not being a mortgage protected by the deposit of documents relating to the legal estate affected) shall rank according to its date of registration as a land charge pursuant to the Land Charges Act, 1925.

This section does not apply to mortgages or charges of registered land or of land within the jurisdiction of a local deeds registry.

In the Land Charges Act (*m*) a "puisne mortgage" means "any legal mortgage not being a mortgage protected by a deposit of documents relating to the legal estate affected, and (where the whole of the land affected is within the jurisdiction of a local deeds registry) not being registered in the local deeds register."

This definition is discussed hereafter (*n*).

Section ix.—*Re-enactments.*

Re-enactments of repealed enactments relating to mortgages.

Of the sections, not hitherto referred to, relating to mortgages, which are contained in Part III. (*o*) of the Property Act, the following are re-enactments of enactments in force at the commencement of, and repealed by, that Act (*p*), namely:—

Sect. 91 (*q*) ("Sale of mortgaged property in action for redemption or foreclosure"), replacing sect. 25 of the Conveyancing Act, 1881;

Sect. 92 ("Power to authorise land and minerals to be dealt with separately"), replacing sect. 44 of the Trustee Act, 1893, as amended by sect. 3 of the Trustee Act, 1894;

Sect. 93 (*r*) ("Restriction on consolidation of mortgages"), replacing sect. 17 of the Conveyancing Act, 1881;

(*m*) L. C. Act, s. 10 (1), Class C (i).
(*n*) Below, p. 409.
(*o*) See above, p. 111, n. (*a*).
(*p*) L. P. Act, s. 207, and Seventh Schedule.
(*q*) Sub-sects. (6) and (7) of this section are new.
(*r*) Sub-sect. (3) of this section is new.

Sect. 95 (*s*) ("Obligation to transfer instead of reconveying, and as to right to take possession"), replacing sect. 15 of the Conveyancing Act, 1881, as amended by sect. 12 of the Conveyancing Act, 1882;

Sect. 96 (*t*) ("Regulations respecting inspection, &c. of documents, and priorities"), replacing sect. 16 of the Conveyancing Act, 1881;

Sect. 98 (*u*) ("Actions for possession by mortgagors"), replacing sect. 25 (5) of the Judicature Act, 1873;

Sect. 99 ("Leasing powers of mortgagor and mortgagee in possession"), replacing (*x*) sect. 18 of the Conveyancing Act, 1881, as amended by sect. 3 (10, 11) of the Conveyancing Act, 1911;

Sect. 100 ("Powers of mortgagor and mortgagee in possession to accept surrenders of leases"), replacing (*x*) sect. 3 of the Conveyancing Act, 1911;

Sect. 101 ("Powers incident to estate or interest of mortgagee"), replacing (*x*) sect. 19 of the Conveyancing Act, 1881, as amended by sect. 4 of the Conveyancing Act, 1911;

Sect. 103 ("Regulation of exercise of power of sale"), replacing sect. 20 of the Conveyancing Act, 1881;

Sect. 104 ("Conveyance on sale"), replacing (*x*) sect. 21 (1, 2) of the Conveyancing Act, 1881, as amended by sect. 5 (1) of the Conveyancing Act, 1911;

Sect. 105 ("Application of proceeds of sale"), replacing sect. 21 (3) of the Conveyancing Act, 1881;

Sect. 106 ("Provisions as to exercise of power of sale"), replacing sect. 21 (4, 5, 6, 7) of the Conveyancing Act, 1881, as amended by sect. 5 (2) of the Conveyancing Act, 1911;

Sect. 107 ("Mortgagee's receipts, discharges, &c."), replacing sect. 22 of the Conveyancing Act, 1881;

Sect. 108 ("Amount and application of insurance money"), replacing (*x*) sect. 23 of the Conveyancing Act, 1881;

(*s*) Sub-sect. (4) of this section is new.
(*t*) Sub-sect. (2) of this section is new.
(*u*) Sub-sect. (2) of this section is new.
(*x*) With some modifications.

Sect. 109 ("Appointment, powers, remuneration and duties of receiver"), replacing (*z*) sect. 24 of the Conveyancing Act, 1881;

Sect. 111 ("Effect of advance on joint account"), replacing sect. 61 of the Conveyancing Act, 1881; and

Sect. 112 ("Notice of trusts on transfer of mortgage"), replacing sect. 13 of the Conveyancing Act, 1911.

Section x.—*Miscellaneous new Enactments.*

The following sections relating to mortgages contained in Part III. (*a*) of the Property Act are new:—

Provision as to mortgages of undivided shares in land.

102.—(1) A person who was before the commencement of this Act a mortgagee of an undivided share in land shall have the same power to sell his share in the proceeds of sale of the land and in the rents and profits thereof until sale, as, independently of this Act, he would have had in regard to the share in the land; and shall also have a right to require the trustees for sale in whom the land is vested to account to him for the income attributable to that share or to appoint a receiver to receive the same from such trustees corresponding to the right which, independently of this Act, he would have had to take possession or to appoint a receiver of the rents and profits attributable to the same share.

(2) The powers conferred by this section are exercisable by the persons deriving title under such mortgagee.

Effect of bankruptcy of the mortgagor on the power to sell or appoint a receiver.

110.—(1) Where the statutory or express power for a mortgagee either to sell or to appoint a receiver is made exercisable by reason of the mortgagor committing an act of bankruptcy or being adjudged a bankrupt, such power shall not be exercised only on account of the act of bankruptcy or adjudication, without the leave of the Court.

(2) This section applies only where the mortgage deed is executed after the commencement of this Act; and in this section "act of bankruptcy" has the same meaning as in the Bankruptcy Act, 1914.

4 & 5 Geo. 5, c. 59.

Notice of trusts affecting mortgage debts.

113.—(1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged released or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume unless the contrary is expressly stated in the instruments relating to the mortgage—

(a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account; and

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(*z*) With some modifications. (*a*) See above, p. 111, n. (*a*).

(b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof;

without investigating the equitable title to the mortgage debt or the appointment or discharge of trustees in reference thereto.

(2) This section applies to mortgages made before or after the commencement of this Act, but only as respects dealings effected after such commencement.

(3) This section does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

In re Blaiberg and Abrahams.

This section gets rid of the decision in *In re Blaiberg and Abrahams*, (1899) 2 Ch. 340 (*b*).

(*b*) Cited, Treatise, Vol. I., p. 228, nn. (*l*) and (*m*).

CHAPTER IV.

STATUTORY CONDITIONS OF SALE (*a*).

Section 1.—*Existing conditions re-enacted.*

THERE are in the Treatise frequent references to sects. 1 and 2 of the Vendor and Purchaser Act, 1874, and sect. 3 of the Conveyancing Act, 1881. There is also one reference (*b*) to sect. 13 of the latter Act.

These enactments, all of which are repealed and, with one exception, re-enacted, with or without amendment, by the Property Act, embody what may be called "Statutory conditions of sale," that is, "provisions which are incorporated in contracts for the sale of land, in the absence of express intention to the contrary" (*c*).

It will be convenient to insert here for future reference a table showing the repealed enactments and the enactments substituted for them, marking with an asterisk such of the latter as introduce amendments of the pre-existing law.

Repealed enactment.	Substituted enactment.	
V. & P. A. 1874, s. 1	L. P. A. 1925, s. 44 (1) *	(10)
„ s. 2, rule (1)	„ s. 44 (2)	(11)
„ s. 2, rule (2)	„ s. 45 (6)	
„ s. 2, rule (3) (*d*) ..	„ s. 45 (7)	(10)
„ s. 2, rule (4) (*d*) ..	„ s. 45 (8)	(10)
„ s. 2, rule (5)	„ s. 45 (9) *	(10)

(*a*) The enactments referred to in this Chapter are contained in Part II. of the Property Act. This Part of the Act is headed "Contracts, Conveyances and other Instruments," and comprises sects. 40 to 84 (inclusive), whereof sects. 40 to 50 (inclusive), covering all those referred to in this Chapter, are headed "Contracts."

(*b*) On p. 94.

(*c*) Treatise, Vol. I., Chap. III., p. 63.

(*d*) As amended by C. A. 1881, s. 9 (8, 11).

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Repealed enactment.	Substituted enactment.
C. A. 1881, s. 3 (1)	L. P. A. 1925, s. 44 (3)
,, s. 3 (2)	,, s. 44 (6)
,, s. 3 (3)	,, s. 45 (1) *
,, s. 3 (4)	,, s. 45 (2)
,, s. 3 (5)	,, s. 45 (3)
,, s. 3 (6)	,, s. 45 (4) *
,, s. 3 (7)	,, s. 45 (5)
,, s. 3 (8)	Not re-enacted
,, s. 3 (9)	,, s. 45 (10)
,, s. 3 (10)	,, s. 45 (10) *
,, s. 3 (11)	,, s. 45 (11)
,, s. 13 (1)	,, s. 44 (4)
,, s. 13 (2)	,, s. 44 (11)
,, s. 13 (3)	,, s. 44 (10 *

It will be seen that all the substituted enactments mentioned in the second column of the above table are contained in sects. 44 and 45 of the Property Act. These sections stand on the same footing as the repealed enactments, in that their application may be excluded, wholly or partially, by a contrary intention "expressed" in the contract (*e*).

Sect. 44 is as follows:—

Statutory commencements of title.

[V. & P. Act, 1874, s. 1.]

44.—(1) After the commencement of this Act thirty [years shall be substituted for] forty [years as the period of commencement of title which a purchaser of land may require; nevertheless earlier title than] thirty [years may be required in cases similar to those in which earlier title than forty years might immediately before the commencement of this Act be required].

[Ib. s. 2 (rule 1).]

(2) [Under a contract to grant or assign a term of years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assign shall not be entitled to call for the title to the freehold.]

[C.A. 1881, s. 3 (1).]

(3) [Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the intended assign shall not have the right to call for the title to the leasehold reversion.]

[Ib. s. 13 (1).]

(4) [On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.]

(5) Where by reason of any of the three last preceding subsections, an intending lessee or assign is not entitled to call for the title to the freehold or to a leasehold reversion, as the case may be, he shall not,

(*e*) L. P. Act, s. 44 (11), s. 45 (10). It is thought that "expressed" will include "implied," where the application, in whole or in part, of any particular statutory condition is inconsistent with the express provisions of the contract.

where the contract is made after the commencement of this Act, be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

(6) [Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.] [Ib. s. 3 (2).]

(7) Where the manorial incidents formerly affecting any land have been extinguished, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title of the person entering into any compensation agreement or giving a receipt for the compensation money to enter into such agreement or to give such receipt, and shall not be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

(8) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by this Act, or by any other statute, or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries.

(9) [Where a lease whether made before or after the commencement of this Act, is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.] [C.A. 1882, s. 4.]

(10) [This section,] save where otherwise expressly provided, [applies to contracts for sale whether made before or after the commencement of this Act,] and applies to contracts for exchange in like manner as to contracts for sale, save that it applies only to contracts for exchange made after such commencement. [V. & P. Act, 1874, ss. 1, 2; C.A. 1881, ss. 3 (10), 13, (3).]

(11) [This section applies only if and so far as a contrary intention is not expressed in the contract.] [V. & P. Act, 1874, ss. 1, 2; C.A. 1881, ss. 3 (9), 13 (2).]

Commencement of title.

Sub-sect. (1) of the above section replaces sect. 1 of the Vendor and Purchaser Act, 1874, which substituted forty years as the period of commencement of title which a purchaser might require in place of sixty years, but preserved the right to require earlier title than forty years in cases similar to those in which earlier title than sixty years might then be required (*f*). This sub-section, while preserving this right, substitutes thirty years for forty years as the period of commencement which a purchaser of land may require in normal cases.

(*f*) As to these cases, see Treatise, pp. 90, 91.

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Notice.

Sub-sect. (5), in the case of a contract made after the commencement of the Property Act, overrides the decision in *Patman* v. *Harland* (*g*) that the statutory condition (if submitted to) removing the necessity of showing the freeholder's title on the grant or assignment of a lease has no greater force than a special stipulation in the contract to the same effect, and so does not exempt the grantee or assignee of the lease from receiving constructive notice of the lessor's title.

Sub-sect. (8), apart from the qualifying words "unless he actually makes such investigation or enquiries," has the effect of overruling the same decision. It is thought that, apart from this effect, this sub-section is declaratory only and does not alter the law. A case might well arise in which a purchaser would be bound to make such investigation or inquiries, *e.g.*, if the title expressly stipulated for were earlier than that prescribed by statute or any rule of law. It is thought that in this sub-section the words "any other statute" refer to the Vendor and Purchaser Act, 1874, where that Act applies, and the words "any rule of law" refer to the rule under which an earlier title than the prescribed number of years may be required in the cases referred to in sub-sect. (1).

The extension of the statutory conditions of sale in this section and in sects. 45 and 47 (*h*) to contracts for exchange is an innovation.

Sect. 45 of the Property Act is as follows:—

Other statutory conditions of sale.

[C.A. 1881, s. 3 (3).]

45.—(1) [A purchaser of any property shall not—

(a) require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated, for the commencement of the title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or

(b) require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, agreed to be produced, or noticed;

and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other

(*g*) 17 C. D. 353, 359.

(*h*) Below, pp. 138, 148.

document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise:]

Provided that this subsection shall not deprive a purchaser of the right to require the production, or an abstract or copy of—

(i) any power of attorney under which any abstracted document is executed; or

(ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or

(iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

(2) [Where land sold is held by lease (other than an under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.] [Ib. s. 3 (4).]

(3) [Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.] [Ib. s. 3 (5).]

(4) [On a sale of any property, the following expenses shall be borne by the purchaser where he requires them to be incurred for the purpose of verifying the abstract or any other purpose, that is to say— [C.A. 1881, s. 3 (6).]

(a) the expenses of the production and inspection of all Acts of Parliament, inclosure awards, records, proceedings of Courts, Court Rolls, deeds, wills, probates, letters of administration, and other documents, not in the possession of the vendor] or his mortgagee or trustee, [and the expenses of all journeys incidental to such production or inspection; and

(b) the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the possession of the vendor] or his mortgagee or trustee, [and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parlia-

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ment or other documents aforesaid, not in the possession of the vendor] or his mortgagee or trustee;

[and where the vendor] or his mortgagee or trustee [retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.]

[Ib. s. 3 (7).]

(5) [On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.]

[V. & P. Act, 1874, s. 2 (rule 2).]

(6) [Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts, matters, and descriptions.]

[Ib. s. 2 (rule 3), as amended by C. A. 1881, s. 9 (8, 11).]

(7) [The inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies of documents of title or with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.]

[V. & P. Act, 1874, s. 2 (rule 4), as similarly amended.]

(8) [Such acknowledgments of the right of production or covenants for production and such undertakings or covenants for safe custody of documents as the purchaser can and does require shall be furnished or made at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.]

[V. & P. Act, 1874, s. 2 (rule 5).]

(9) [A vendor shall be entitled to retain documents of title where—

(a) he retains any part of the land to which the documents relate;] or

(b) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.

[V. & P. Act, 1874, s. 2; C.A. s. 3(10).]

(10) [This section applies to contracts for sale made before or after the commencement of this Act,] and applies to contracts for exchange in like manner as to contracts for sale, except that it applies only to contracts for exchange made after such commencement:

[V. & P. Act, 1874, s. 2; C. A. 1881, s. 3 (9).]

[Provided that this section shall apply subject to any stipulation or contrary intention expressed in the contract.]

[C. A. 1881, s. 3 (11).]

(11) [Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the Court.]

Application of section.

It will be noticed that, subject to any stipulation or contrary intention expressed in the contract, the whole of this section

applies to contracts for sale, whether made before or after the commencement of the Property Act, and also applies to contracts for exchange, made after such commencement, in like manner as to contracts for sale.

The proviso to sub-sect. (1) is a new statutory enactment; but does not, it is thought, alter the law as previously existing (*i*).

The introduction of the words "or his mortgagee or trustee," where introduced in paragraphs (a) and (b) of sub-sect. (4) effects an amendment of the law, which will be appreciated by purchasers, and incidentally overrides the decision in *Re Willett and Argenti* (*k*) that a purchaser must pay the expenses of the production of documents in the possession of the vendor's mortgagees.

It is thought that the words "or his mortgagee or trustee," where they last occur in the sub-section, do not alter the previous law.

Retention of documents.

It will be seen that by paragraph (b) of sub-sect. (9) the documents which a vendor may retain are extended to include "a trust instrument or other instrument creating a trust which is still subsisting," and "an instrument relating to the appointment or discharge of a trustee of a subsisting trust." It is thought that this paragraph applies to any such instrument, whether in the vendor's possession or in the possession of the trustees or trustee.

Section ii.—*New Statutory Conditions.*

Sects. 42, 43, 46, 47 and 48 of the Property Act introduce statutory conditions of sale which are wholly new, and, for the most part, are obligatory and cannot be varied or excluded by express or implied agreement.

Sect. 42 is as follows:—

Provisions as to contracts.

42.—(1) A stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to

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(*i*) See as to paragraph (i), Treatise, p. 110; as to paragraph (ii), Treatise, p. 181; and as to paragraph (iii), Treatise, p. 104.

(*k*) 5 T. L. R. 476; 60 L. T. N. S. 735.

an equitable interest shall be void, if a title can be made discharged from the equitable interest without such concurrence—

(a) under a trust for sale; or

(b) under this Act, or the Settled Land Act, 1925, or any other statute.

(2) A stipulation that a purchaser of a legal estate in land shall pay or contribute towards the costs of or incidental to—

(a) obtaining a vesting order, or the appointment of trustees of a settlement, or the appointment of trustees of a conveyance on trust for sale; or

(b) the preparation stamping or execution of a conveyance on trust for sale, or of a vesting instrument for bringing into force the provisions of the Settled Land Act, 1925;

shall be void.

(3) A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Act, to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser or that no objection is to be taken on account of an outstanding legal estate, shall be void.

(4) If the subject matter of any contract for the sale or exchange of land—

(i) is a mortgage term and the vendor has power to convey the fee simple in the land, or, in the case of a mortgage of a term of years absolute, the leasehold reversion affected by the mortgage, the contract shall be deemed to extend to the fee simple in the land or such leasehold reversion;

(ii) is an equitable interest capable of subsisting as a legal estate, and the vendor has power to vest such legal estate in himself or in the purchaser or to require the same to be so vested, the contract shall be deemed to extend to such legal estate;

(iii) is an entailed interest in possession and the vendor has power to vest in himself or in the purchaser the fee simple in the land, (or, if the entailed interest is an interest in a term of years absolute, such term,) or to require the same to be so vested, the contract shall be deemed to extend to the fee simple in the land or the term of years absolute.

(5) This section does not affect the right of a mortgagee of leasehold land to sell his mortgage term only if he is unable to convey or vest the leasehold reversion expectant thereon.

(6) Any contract to convey an undivided share in land made before or after the commencement of this Act, shall be deemed to be sufficiently complied with by the conveyance of a corresponding share in the proceeds of sale of the land in like manner as if the contract had been to convey that corresponding share.

(7) Where a purchaser has power to acquire land compulsorily, and a contract, whether by virtue of a notice to treat or otherwise, is subsisting under which title can be made without payment of the compensation money into Court, title shall be made in that way unless the

purchaser, to avoid expense or delay or for any special reason, considers it expedient that the money should be paid into Court.

(8) A vendor shall not have any power to rescind a contract by reason only of the enforcement of any right under this section.

(9) This section only applies in favour of a purchaser for money or money's worth.

Application of section.

It will be noticed that this section only applies in favour of a purchaser for money or money's worth (*l*); that sub-sects. (1) and (2) apply only to contracts for the sale of a "legal estate" in land; and that sub-sects. (3) and (4) apply to contracts for exchange as well as to contracts for sale. The whole section, it is thought, having regard to its subject-matter, applies, and can apply, only to contracts made after the commencement of the Property Act.

Concurrence of equitable owners.

Sub-sect. (1) raises the question of what "equitable interests" can, in the several cases therein mentioned, be overridden by the conveyance of the legal estate without the concurrence of the person entitled to the equitable interest. This question will be considered hereafter (*m*).

Getting in legal estate.

The combined effect of sub-sects. (2) and (3) of this section and of sect. 43 (*n*) appears to be to render invalid, in any contract to which the section applies for the sale of a "legal estate," the common form condition or stipulation to the effect that every assurance and act (if any) which shall be required by the purchaser for getting in, surrendering, or releasing any outstanding estate, right, title or interest, or for completing or perfecting the vendor's title, shall be prepared, made and done by and at the expense of the purchaser (*o*); as also any condition or stipulation that the purchaser shall bear the expense of the concurrence in the conveyance of all necessary parties other than the vendor (*o*).

Undivided share.

Sub-sect. (6) is the logical consequence of the new law under which an undivided share in land cannot subsist as a legal estate (*p*), and can only take effect behind a trust for sale (*q*).

(*l*) As to the meaning of this expression, see below, p. 198.
(*m*) Below, p. 203.
(*n*) Below, p. 142.
(*o*) See, *e.g.*, condition 10 on p. 61 of the Treatise.
(*p*) Above, p. 98. (*q*) Below, p. 160.

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Sub-sect. (7) refers to cases where, under or by reference to the Lands Clauses Acts or under other parliamentary powers, a railway or other public company or some public authority has power to acquire land compulsorily.

Sub-sect. (8) no doubt refers to the power commonly given to a vendor to rescind the contract if the purchaser shall insist on any objection or requisition which the vendor is unable or unwilling to remove or comply with (*r*).

Sect. 43 is as follows:—

Rights protected by registration.

43.—(1) Where a purchaser of a legal estate is entitled to acquire the same discharged from an equitable interest which is protected by registration as a pending action, annuity, writ, order, deed of arrangement or land charge, and which will not be overreached by the conveyance to him, he may notwithstanding any stipulation to the contrary, require—

(*a*) that the registration shall be cancelled; or

(*b*) that the person entitled to the equitable interest shall concur in the conveyance;

and in either case free of expense to the purchaser.

(2) Where the registration cannot be cancelled or the person entitled to the equitable interest refuses to concur in the conveyance, this section does not affect the right of any person to rescind the contract.

Sub-sect. (2) is somewhat obscure. A right to rescind a contract may be a common law right arising from a breach by the other party of one of the main duties of the contract (*s*). Or it may arise from contract, *e.g.*, from the above-mentioned power to rescind frequently given expressly to a vendor. On the whole, it is thought that the common law right is the right referred to; for a vendor who is unable to convey a legal estate so as to bind every equitable interest in the property would appear to commit a breach of the contract such as to entitle the purchaser to rescind. It may be, however, that a vendor who had acted in good faith, believing that he could procure the registration to be cancelled or the concurrence of the person entitled to the equitable interest, could bring himself within the principles on which the Court allows such a power to be exercised (*t*).

(*r*) See, *e.g.*, condition 7 on p. 58 of the Treatise.
(*s*) See Treatise, p. 35, "Remedies for Breach of the Contract."
(*t*) *Sed quære.* See Treatise, Vol. I., pp. 58-9 and note (*x*), pp. 171—175.

Forms of contracts and conditions of sale.

46. The Lord Chancellor may from time to time prescribe and publish forms of contracts and conditions of sale of land, and the forms so prescribed shall, subject to any modification, or any stipulation or intention to the contrary, expressed in the correspondence, apply to contracts by correspondence, and may, but only by express reference thereto, be made to apply to any other cases for which the forms are made available.

In exercise of the powers conferred upon him by this section the Lord Chancellor, by an Order dated the 7th day of August, 1925 (*u*), has prescribed and published a form of conditions of sale and directed that it shall be available for any contract for the sale of land made on or after the 1st day of January, 1926.

The form so prescribed is headed as follows:—

STATUTORY FORM OF CONDITIONS OF SALE.

NOTE.—*These conditions will apply to contracts for the sale of land by correspondence, subject to any modification or any stipulation or intention to the contrary expressed in the correspondence.*

They may also by express reference thereto be made to apply to any contract for the sale of land, and may for this or any other purpose be cited as the Statutory Form of Conditions of Sale, 1925.

From this note, as also from the section itself, it seems clear that, subject as mentioned in the section and the note, the conditions prescribed by this Order apply automatically to any contract by correspondence for the sale of land where such contract becomes completed (*v*) on or after the 1st January, 1926; and that, whether or not the parties to the correspondence intended that they should apply, or even knew of the existence of the section and Order making them applicable.

It will be noticed that to any contract for the sale of land made on or after the 1st January, 1926, otherwise than by correspondence, these conditions will apply only if and so far as incorporated in the contract by express reference to such conditions.

The prescribed conditions are as follows:—

Date fixed for completion.

1. The date for completion shall, unless otherwise agreed, be the first day after the expiration of seven weeks from the time when the

(*u*) Statutory Rules and Orders, 1925, No. 779/L.14.
(*v*) See Treatise, Vol. I., p. 20.

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contract is made, or if that day is a Sunday, Christmas Day, Good Friday or Bank Holiday, the next following working day.

Place for completion.

2. Completion shall take place at the office of the vendor's solicitors, or if the vendor so requires at the office of the solicitors of his mortgagees, if any.

Possession and apportionment of outgoings.

3.—(1) The purchaser paying his purchase money or, where a deposit is paid, the balance thereof, shall, as from the date fixed for completion (but subject to the execution of any conveyance which ought to be executed by him), be let into possession, or into receipt of rents and profits, and shall, as from that date, pay all outgoings, and up to that date all current rents, and all rates, taxes, and other outgoings shall (if necessary) be apportioned, and the balance shall be paid by or allowed to the purchaser on actual completion, and for this purpose the purchaser shall be liable to pay to the vendor a proportionate part of the current rents accrued in respect of the property up to the date fixed for completion:

Provided that all rates shall be apportioned, so far as practicable, according to the period for which they are intended to provide, and not as running from the dates when the same are made or allowed.

(2) Where as respects any rate the date fixed for completion falls between the expiration of the period for which the last rate was made and the making of a new rate, the new rate shall, for the purposes of this condition, be deemed to have been made at the same rate in the pound as that at which the last rate was made, and shall be calculated from day to day.

Interest on purchase money.

4.—(1) If from any cause whatever (save as hereinafter mentioned), the completion of the purchase is delayed beyond the date fixed for completion, the purchase money, or where a deposit is paid, the balance thereof, shall bear interest at the rate of £5 per cent. per annum, from the date fixed for the completion to the day of actual payment thereof.

(2) Provided that, if delay in completion arises from any other cause than the purchaser's own act or default the purchaser may—

(a) at his own risk, deposit the purchase money, or where a deposit is paid, the balance thereof, at any bank in England or Wales, in his own name or otherwise, and

(b) give notice in writing forthwith of such deposit to the vendor or his solicitors,

and in that case the vendor shall be bound to accept the interest, if any, allowed thereon, as from the date of such deposit, in lieu of the interest accruing after the date of the deposit, which would otherwise be payable to him under this condition.

(3) No interest shall become payable by the purchaser if delay in completion is attributable to—

(a) a refusal by the vendor to deduce title in accordance with the contract, or to give an authority to inspect the register kept under the Land Registration Act, 1925, or to convey; or

(b) any other wilful act or default of the vendor or his Settled Land Act trustees.

(4) The vendor shall, as from the date when interest becomes payable under this condition, have the option (to be exercised by notice in writing) of taking an apportioned part of the rents and profits, less apportioned outgoings, up to the date of actual completion, in lieu of the interest otherwise payable under this condition; and, if the said option is exercised, the same payments, allowances and apportionments shall be made as if the date fixed for completion had been the date of actual completion.

The said option shall not be exercisable in any case in which subclause (2) of this clause applies.

Delivery of abstract.

5.—(1) The vendor shall deliver to the purchaser or his solicitor—

(a) an abstract of the title to the property sold, or

(b) in the case of land registered with an absolute or good leasehold title, the particulars and information which ought to be furnished in lieu of an abstract, with a written authority to inspect the register,

and, in either case, within fourteen days from the date when the contract was made.

(2) Where land is registered with a possessory or qualified title, the abstract (if any) shall only relate to estates, rights, and interests, subsisting or capable [or] taking effect prior to the date of first registration, or excluded from the effect of first registration, and dealings therewith, and subject as aforesaid, the foregoing provisions relating to absolute or good leasehold titles, shall apply. [*Sic.*]

Requisitions.

6.—(1) The purchaser shall within fourteen days after the actual delivery of the abstract, or of the said particulars and information, whether or not delivered within the time prescribed, send to the solicitors of the vendor a statement in writing of all the objections and requisitions (if any) to or on—

(a) the title or evidence of title,

(b) the abstract or the said particulars and information,

(c) the contract, as respects matters not thereby specifically provided for,

and subject thereto the title shall be deemed accepted.

(2) All objections and requisitions not included in any statement sent within the time aforesaid, and not going to the root of the title, shall be deemed waived.

(3) An abstract or the said particulars and information though in fact imperfect, shall be deemed perfect, except for the purpose of any objections or requisitions, which could not have been taken or made on the information therein contained.

(4) An answer to any objection or requisition shall be replied to, in writing, within seven days after delivery thereof and, if not so replied to, shall be considered satisfactory.

Power to rescind.

7.—(1) If the purchaser shall take or make any objection or requisition, which the vendor is unable to remove or comply with, and the purchaser shall not withdraw such objection or requisition within ten

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days after being required, in writing, so to do, the vendor may, by notice in writing delivered to the purchaser or his solicitor and notwithstanding any intermediate negotiations, rescind the contract.

(2) This condition does not apply so as to prevent the enforcement by a purchaser, of any right conferred on him, by section forty-two of the Law of Property Act, 1925.

(3) If the contract is so rescinded the vendor shall, within one week after default is made in complying with the requirement to withdraw the objection or requisition, repay to the purchaser his deposit money (if any), but without interest, and the purchaser shall return forthwith all abstracts and papers in his possession, belonging to the vendor, and shall not make any claim on the vendor for costs, compensation or otherwise.

Preparation of conveyance.

8.—(1) The conveyance or instrument of transfer to the purchaser, shall be prepared by him and at his own expense, and the draft thereof shall be delivered at the office of the solicitors of the vendor at least ten days before the date fixed for completion, for perusal and approval on behalf of the vendor and other necessary parties (if any).

(2) The engrossment of such conveyance or transfer, for execution by the vendor and other necessary parties (if any), shall be left at the said office within four days after the draft has been returned approved on behalf of the vendor and other necessary conveying parties (if any).

(3) Delivery of a draft or of an engrossment shall not prejudice any outstanding requisition.

Power for vendor to resell after notice.

9.—(1) If the purchaser shall neglect or fail to perform his part of the contract the vendor may give to the purchaser or to his solicitor at least twenty-one days' notice in writing specifying the breach and requiring the purchaser to make good the default before the expiration of the notice.

(2) If the purchaser does not comply with the terms of the said notice—

(a) the deposit money, if any, shall, unless the Court otherwise directs, be forfeited to the vendor, or, in the case of settled land, to his Settled Land Act trustees;

(b) the vendor may resell the property without previously tendering a conveyance or instrument of transfer to the purchaser;

and the following provisions shall apply.

(3) Any resale may be made, by auction or private contract, at such time, subject to such conditions, and in such manner generally, as the vendor may think proper, and the defaulting purchaser shall have no right to any part of the purchase money thereby arising.

The statutory form, in regard to the matters with which it deals, appears to differ from the usual form of a formal contract for sale mainly in the following particulars:—

(i) The vendor may require completion to take place at the office of the solicitors of the mortgagees (if any). (Clause 2.)

(ii) In the reference in sub-clause (1) of clause 3 to the execution of a conveyance by the purchaser. This is probably a reference to the provision that where a sale is made in consideration of a rent the purchaser must execute and deliver to the vendor a duplicate of the conveyance (*x*).

(iii) In the provision as to new rates in sub-clause (2) of the same clause.

(iv) In exempting the purchaser from the payment of interest if delay in completion is attributable to any of the circumstances mentioned in sub-clause (3) of clause 4. Usually such exemption is limited to the case where delay is attributable to the wilful default of the vendor.

(v) In limiting the vendor's right to rescind to cases where he is *unable* to remove or comply with an objection or requisition. (Clause 7.)

(vi) In the terms of the power given to the vendor to re-sell. (Clause 9 (*y*).) The object of such a notice as is referred to in this clause is usually to make time of the essence of the contract for the performance of what remains to be done by the purchaser (*z*). The time specified in a notice given for that purpose must be a reasonable time, having regard to the circumstances of the case and what remains to be done (*z*); and it may be a question whether the minimum notice of twenty-one days prescribed by clause 9 will necessarily be held to be a reasonable notice in all cases.

The words "unless the Court otherwise directs" in paragraph (a) of sub-clause (2) of clause 9 no doubt refer to the power or discretion to order the return of a deposit given to the Court by sub-sect. (2) of sect. 49 of the Property Act (*a*).

Sub-clause (1) (b) and sub-clause (2) of clause 5 of the statutory form refer to the statutory provisions which apply as between a vendor and purchaser of registered land (*b*).

(*x*) S. L. Act, s. 39 (4) (ii).
(*y*) Such a power is not usually given expressly in a formal contract for sale by private treaty.
(*z*) See Treatise, Vol. I., pp. 45-6.
(*a*) Below, Part IX., Section I.
(*b*) L. R. Act, s. 110.

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Application of insurance money on completion of a sale or exchange.

Sect. 47 is as follows:—

47.—(1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.

(2) This section applies only to contracts made after the commencement of this Act, and has effect subject to—

(a) any stipulation to the contrary contained in the contract,

(b) any requisite consents of the insurers,

(c) the payment by the purchaser of the proportionate part of the premium from the date of the contract.

(3) This section applies to a sale or exchange by an order of the Court, as if—

(a) for references to the "vendor" there were substituted references to the "person bound by the order";

(b) for the reference to the completion of the contract there were substituted a reference to the payment of the purchase or equality money (if any) into Court.

(c) for the reference to the date of the contract there were substituted a reference to the time when the contract becomes binding.

This section, unless excluded expressly or by necessary inference, will apply to every contract for the sale or exchange of land made after the commencement of the Property Act, where the land sold includes any building or other insurable property which is insured against damage or destruction by fire (*c*) by a policy maintained by the vendor, *if*, but only if, (1) between the date of the contract and the date of its completion a fire occurs and by reason thereof money becomes payable under the policy; (2) the insurers consent to the money being paid to the purchaser; and (3) the purchaser pays to the vendor or allows him to deduct a proportionate part of the premium from the date of the contract to the date of the fire.

This section, it is thought, does not override the right of "any person interested" to require the insurance money to

(*c*) The section is wide enough to include an insurance against damage or destruction to property from *any* cause; but, in the vast majority of cases, the only insurance which need be contemplated is an insurance against fire.

be laid out in rebuilding or reinstating the property which has been destroyed or damaged by fire (*d*).

In some cases, at any rate, it may be thought simpler and more convenient to exclude the section and to rely upon the usual condition to the effect that, while the property is to be at the risk of the purchaser as from the date of the contract and the vendor is not to be liable to keep up or effect any insurance, the vendor will, subject to the consent of the office and to the payment by the purchaser of a proportionate part of the premium, hold the existing policy in trust for the purchaser (*e*).

Sect. 48 is as follows:—

Stipulations preventing a purchaser, lessee, or underlessee from employing his own solicitor to be void.

48.—(1) Any stipulation made on the sale of any interest in land after the commencement of this Act to the effect that the conveyance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor to act on his behalf in relation to any interest in land agreed to be purchased, shall be void; and, if a sale is effected by demise or subdemise, then, for the purposes of this subsection, the instrument required for giving effect to the transaction shall be deemed to be a conveyance:

Provided that nothing in this subsection shall affect any right reserved to a vendor to furnish a form of conveyance to a purchaser from which the draft can be prepared, or to charge a reasonable fee therefor, or, where a perpetual rentcharge is to be reserved as the only consideration in money or money's worth, the right of a vendor to stipulate that the draft conveyance is to be prepared by his solicitor at the expense of the purchaser.

(2) Any covenant or stipulation contained in, or entered into with reference to any lease or underlease made before or after the commencement of this Act—

(a) whereby the right of preparing, at the expense of a purchaser, any conveyance of the estate or interest of the lessee or underlessee in the demised premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such estate or interest, is expressed to be reserved to or vested in the lessor or underlessor or his solicitor; or

(b) which in any way restricts the right of the purchaser to have such conveyance carried out on his behalf by a solicitor appointed by him;

shall be void:

(*d*) See Treatise, Vol. I., pp. 485 to 488.

(*e*) As to the prudence of a purchaser himself insuring against fire, see *ibid.*, p. 487.

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Provided that, where any covenant or stipulation is rendered void by this subsection, there shall be implied in lieu thereof a covenant or stipulation that the lessee or underlessee shall register with the lessor or his solicitor within six months from the date thereof, or as soon after the expiration of that period as may be practicable, all conveyances and devolutions (including probates or letters of administration) affecting the lease or underlease and pay a fee of one guinea in respect of each registration, and the power of entry (if any) on breach of any covenant contained in the lease or underlease shall apply and extend to the breach of any covenant so to be implied.

(3) Save where a sale is effected by demise or subdemise, this section does not affect the law relating to the preparation of a lease or underlease or the draft thereof.

(4) In this section "lease" and "underlease" include any agreement therefor or other tenancy, and "lessee" and "underlessee" and "lessor" and "underlessor" have corresponding meanings.

In connection with the proviso to sub-sect. (1) of this section it may be pointed out that sales in consideration only of a perpetual rentcharge are likely to become more common than hitherto, seeing that under the new law a tenant for life and (subject to the necessary consents) trustees for sale are empowered to sell for such a consideration (*f*).

Sub-sect. (2) of the section, where it applies to any lease or underlease made before the commencement of the Act, will, as from such commencement, operate automatically to alter the terms and conditions of such lease or underlease by deleting the covenant or stipulation which is avoided and substituting the covenant or stipulation which is to be implied in lieu thereof.

(*f*) See S. L. Act, s. 39; L. P. Act, s. 28.

CHAPTER V.

TENANCIES IN COMMON IN LAND.

Section i.—*Introductory.*

No legal estates in undivided shares.

As we have seen (*a*), a legal estate is not capable of subsisting or being created in an undivided share in land.

Tenancies in common and joint tenancies.

This disability applies only to tenancies in common, not to joint tenancies. Strictly speaking, joint tenants do not hold in distinct shares, but each is equally entitled to the whole (*b*).

Section ii.—*Existing Tenancies in Common.*

L. P. Act, 1st Sched. Part IV.

Part IV. of the Transitional Provisions (*c*) contained in the First Schedule to the Property Act is headed "Provisions subjecting Land held in Undivided Shares to a Trust for Sale," and deals with land so held immediately before the commencement of the Act.

L. P. Act, 1st Sched. Part IV., para. 1.

Paragraph 1 of this Part of the Schedule contains provisions which are to apply where, immediately before the commencement of the Act, land is held at law or in equity in undivided shares *vested in possession*.

These provisions are contained in twelve sub-paragraphs (*d*), whereof the first four provide how the entirety of the land is to vest in the several cases therein mentioned.

(*a*) L. P. Act, s. 1 (6), above, p. 98.

(*b*) See Goodeve's Law of Real Property, pp. 232-3, 5th ed.

(*c*) Above, p. 23.

(*d*) Sub-paragraph (12) provides that in this Part of the Schedule "incumbrance" does not include land tax, tithe rentcharge, or any similar charge on the land not created by an instrument. For the definition of "instrument" in the L. P. Act, see Table of Definitions, above, Part I., Chap. VII.

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Ib. Sub-para. (1). Unsettled land.

Sub-paragraph (1) is as follows:—

(1) If the entirety of the land is vested in trustees or personal representatives (whether subject or not to incumbrances affecting the entirety or an undivided share) in trust for persons entitled in undivided shares, then—

(a) if the land is subject to incumbrances affecting undivided shares or to incumbrances affecting the entirety which under this Act or otherwise are not secured by legal terms of years absolute, the entirety of the land shall vest free from such incumbrances in such trustees or personal representatives and be held by them upon the statutory trusts; and

(b) in any other case, the land shall be held by such trustees or personal representatives upon the statutory trusts;

subject in the case of personal representatives, to their rights and powers for the purposes of administration.

Inasmuch as sub-paragraph (3) relates to "settled land," it is thought that sub-paragraph (1) applies only where the entirety of the land is not held "in trust for any persons by way of succession" or otherwise so as to be "settled land" (*e*).

"The statutory trusts."

The expression "statutory trusts" is defined as follows by sect. 35 of the Property Act (*f*):—

Meaning of the statutory trusts.

35. For the purposes of this Act land held upon the "statutory trusts" shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land.

Incumbrancers.

It will be seen that by virtue of this section the rights and claims of incumbrancers, other than an incumbrancer whose incumbrance is secured by a legal mortgage (*g*) of the entirety, are, equally with those of the beneficiaries, shifted from the land to the net proceeds of sale and the net rents and profits until

(*e*) See S. L. Act, ss. 1, 2, below, pp. 258, 259.

(*f*) For the similar definition in the S. L. Act, s. 36 (6), see Table of Definitions, above, Part I., Chap. VII., and below, p. 160.

(*g*) For the definition of "legal mortgage," see Table of Definitions, above, Part I., Chap. VII.

sale, or, in other words, to use the language of the Settled Land Act (*h*), "take effect behind a trust for sale."

Protection of incumbrancers.

In regard to incumbrancers, sub-paragraph (1), as also sub-paragraph (3) (*i*), of paragraph 1 of this Part of the Schedule must be read in conjunction with sub-paragraphs (7), (8) and (9), which are as follows:—

(7) Where all the undivided shares in the land are vested in the same mortgagees for securing the same mortgage money and the rights of redemption affecting the land are the same as might have been subsisting if the entirety had been mortgaged by an owner before the undivided shares were created, the land shall, by virtue of this Act, vest in the mortgagees as joint tenants for a legal term of years absolute (in accordance with this Act) subject to cesser on redemption by the trustees for sale in whom the right of redemption is vested by this Act, and for the purposes of this Part of this Schedule the mortgage shall be deemed an incumbrance affecting the entirety.

(8) This Part of this Schedule does not (except where otherwise expressly provided) prejudice incumbrancers whose incumbrances affect the entirety of the land at the commencement of this Act, but (if the nature of the incumbrance admits) the land shall vest in them for legal terms of years absolute in accordance with this Act but not so as to affect subsisting priorities.

(9) The trust for sale and powers of management vested in persons who hold the entirety of the land on trust for sale shall, save as hereinafter mentioned, not be exercisable without the consent of any incumbrancer, being of full age, affected whose incumbrance is divested by this Part of this Schedule, but a purchaser shall not be concerned to see or inquire whether any such consent has been given, nor, where the incumbrancer is not in possession, shall any such consent be required if, independently of this Part of this Schedule or any enactment replaced thereby the transaction would have been binding on him, had the same been effected by the mortgagor.

The words "in accordance with this Act" in sub-paragraphs (7) and (8) refer to the provisions of Parts VII. and VIII. of the First Schedule to the Property Act relating to the conversion of existing mortgages (*k*).

The reference in sub-paragraph (9) to "powers of management" is to sect. 28 of the Property Act (*l*).

In the same sub-paragraph "divested" no doubt means "shifted from the land to the net proceeds of sale and the net

(*h*) Sect. 36 (4), below, p. 160.
(*i*) Below, p. 154.
(*k*) Above, p. 111.
(*l*) Below, p. 170.

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rents and profits until sale," as mentioned above (*m*) in connection with sect. 35 of the Property Act.

L. P. Act, 1st Sched. Part IV., para. 1 (2). Land vested absolutely and beneficially.

Sub-paragraph (2) is as follows:—

(2) If the entirety of the land (not being settled land) is vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares free from incumbrances affecting undivided shares, but subject or not to incumbrances affecting the entirety, it shall, by virtue of this Act, vest in them as joint tenants upon the statutory trusts.

The conditions of this sub-paragraph must be strictly fulfilled, otherwise the land will vest in the Public Trustee under sub-paragraph (4) (*n*). Thus, for example, it would so vest if any one of the undivided shares should chance to be incumbered. The strictest evidence, therefore, which the conditions of the contract permit, should be required of the fulfilment of the prescribed conditions and, in particular, of the non-existence of any incumbrance affecting any undivided share or shares, where the vendors base their title on sub-paragraph (2).

L. P. Act, 1st Sched. Part IV., para. 1 (3). Settled land.

Sub-paragraph (3) is as follows:—

(3) If the entirety of the land is settled land (whether subject or not to incumbrances affecting the entirety or an undivided share) held under one and the same settlement, it shall, by virtue of this Act, vest, free from incumbrances affecting undivided shares, and from incumbrances affecting the entirety, which under this Act or otherwise are not secured by a legal term of years absolute, in the trustees (if any) of the settlement as joint tenants upon the statutory trusts.

Provided that if there are no such trustees, then—

(i) pending their appointment, the land shall, by virtue of this Act, vest (free as aforesaid) in the Public Trustee upon the statutory trusts;

(ii) the Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of persons interested in more than an undivided half of the land or the income thereof;

(iii) after the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the Court) be appointed in the place of the Public Trustee without his consent;

(*m*) P. 152.
(*n*) Below, p. 156.

(iv) if, before the Public Trustee has accepted the trust, trustees of the settlement are appointed, the land shall, by virtue of this Act, vest (free as aforesaid) in them as joint tenants upon the statutory trusts;

(v) if, before the Public Trustee has accepted the trust, the persons having power to appoint new trustees are unable or unwilling to make an appointment, or if the tenant for life having power to apply to the Court for the appointment of trustees of the settlement neglects to make the application for at least three months after being requested by any person interested in writing so to do, or if the tenants for life of the undivided shares are unable to agree, any person interested under the settlement may apply to the Court for the appointment of such trustees.

"Statutory trusts."

The definition of "statutory trusts" has already been mentioned (*o*).

"Settlement," "settled land," "trustees of the settlement."

In the Property Act, "settlement," "settled land" and "trustees of the settlement" have the same meanings as in the Settled Land Act (*p*).

Inasmuch, then, as the whole of paragraph 1 of this Part of the Schedule applies only where the undivided shares are vested *in possession*, it appears to follow that sub-paragraph (3) can only apply where the persons entitled in possession are tenants in common holding for such limited interests as that, if they were entitled as joint tenants and were all of *full age*, they would together constitute the tenant for life for the purposes of the Settled Land Act (*q*), or, in other words, are "the tenants for life of the undivided shares" within the meaning of clause (v) of the proviso. It should be noticed that "the tenants for life of the undivided shares" do *not* together constitute the tenant for life of the entirety; and, accordingly, the reference in the same clause to "the tenant for life" is somewhat perplexing.

Nature of settlements on trust for sale.

Generally, in regard to settlements which, by express disposition or by virtue of the Property Act, take effect as settlements on "trust for sale," it is suggested that such a settlement

(*o*) Above, p. 152.
(*p*) See Table of Definitions, above, Part I., Chap. VII.
(*q*) See S. L. Act, s. 19 (2), below, p. 262. For the definition of "tenant for life" in that Act, see Table of Definitions, above, Part I., Chap. VII.

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is a "settlement" within the meaning of the Settled Land Act, and, within the same meaning, the land subject to the trust for sale is "settled land," and the trustees for sale are "the trustees of the settlement"; but with this qualification, that under such a settlement no beneficiary, as such, can be the tenant for life or a person having the powers of a tenant for life. Accordingly, it seems that the provisions of the Settled Land Act as to vesting deeds (*r*) or any other provisions of the same Act which postulate the existence of a "tenant for life" or "statutory owner" can have no application to settlements on trust for sale. Such settlements, moreover, are subject to the provisions of the Property Act relating to "dispositions on trust for sale" (*s*), under which provisions trustees for sale, in relation to land or manorial incidents and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act (*t*).

L. P. Act, 1st Sched. Part IV. 1 (4). Vesting in other cases.

Sub-paragraph (4), apart from the proviso, is as follows:—

(4) In any case to which the foregoing provisions of this Part of this Schedule do not apply, the entirety of the land shall vest (free as aforesaid) in the Public Trustee upon the statutory trusts:

The proviso to this sub-paragraph is introduced by the words "provided that" and contains four clauses, whereof (i) and (ii) are identical with clauses (ii) and (iii) of the proviso to sub-paragraph (3) and clauses (iii) and (iv) are as follows:—

(iii) Subject as aforesaid, any persons interested in more than an undivided half of the land or the income thereof may appoint new trustees in the place of the Public Trustee with the consent of any incumbrancers of undivided shares (but so that a purchaser shall not be concerned to see whether any such consent has been given) and vest the land in the persons so appointed (free as aforesaid) upon the statutory trusts; or such persons may (without such consent as aforesaid), at any time, whether or not the Public Trustee has accepted the trust, apply to the Court for the appointment of trustees of the land, and the Court may make such order as it thinks fit, and if thereby trustees of the land are appointed, the same shall, by virtue of this Act, vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(*r*) See, *e.g.*, S. L. Act, ss. 4, 5 and 13, below, Part IV.
(*s*) L. P. Act, ss. 23 to 33 (inclusive), below, Chap. VII.
(*t*) *Ibid.*, s. 28 (1).

(iv) If the persons interested in more than an undivided half of the land or the income thereof do not either request the Public Trustee to act, or (whether he refuses to act or has not been requested to act) apply to the Court for the appointment of trustees in his place, within three months from the time when they have been requested in writing by any person interested so to do, then and in any such case, any person interested may apply to the Court for the appointment of trustees in the place of the Public Trustee, and the Court may make such order as it thinks fit, and if thereby trustees of the land are appointed the same shall by virtue of this Act, vest (free as aforesaid) in the trustees upon the statutory trusts.

Sub-paragraphs (5) and (6) are as follows:—

L. P. Act, 1st Sched. Part IV., para. 1 (5). Saving of directions for payment.

(5) The vesting in the Public Trustee of land by virtue of this Part of this Schedule shall not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.

Ib. (6). Evidence of title.

(6) The Court or the Public Trustee may act on evidence given by affidavit or by statutory declaration as respects the undivided shares without investigating the title to the land.

Sub-paragraph (10) is as follows:—

L. P. Act, 1st Sched. Part IV., para. 1 (10). Saving of subsisting contracts and pending partition actions.

(10) This Part of this Schedule does not apply to land in respect of which a subsisting contract for sale (whether made under an order in a partition action or by or on behalf of all the tenants in common or coparceners) is in force at the commencement of this Act if the contract is completed in due course (in which case title may be made in like manner as if this Act, and any enactment thereby replaced, had not been passed), nor to the land in respect of which a partition action is pending at such commencement if an order for a partition or sale is subsequently made in such action.

It is thought that this sub-paragraph, having regard to the reference to "coparceners" and to the difficulties in the way of applying it to settled land, applies to contracts for sale by tenants in common only where they are absolutely entitled in possession and can, or before the commencement of the Act could, by virtue of their combined beneficial interests and independently of any statutory power, make a title to the entirety of the land contracted to be sold for the whole of the estate or interest the subject of the contract.

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The Partition Acts, 1868 and 1876, are repealed by the Property Act without prejudice to proceedings commenced thereunder before the commencement of that Act (*u*).

L. P. Act, 1st Sched. Part IV., para. 1 (11). Partition.

Sub-paragraph (11) of this Part of the Schedule provides as follows:—

(11) The repeal of the enactments relating to partition shall operate without prejudice to any proceedings thereunder commenced before the commencement of this Act, and to the jurisdiction of the Court to make any orders in reference thereto, and subject to the following provisions, namely:—

(i) In any such proceedings, and at any stage thereof, any person or persons interested individually or collectively in more than one-half of the land to which the proceedings relate, may apply to the Court for an order staying such proceedings;

(ii) The Court may upon such application make an order staying the proceedings as regards the whole or any part, not being an undivided share, of the land;

(iii) As from the date of such order the said enactments shall cease to apply to the land affected by the order and the provisions of this Part of this Schedule shall apply thereto;

(iv) The Court may by such order appoint trustees of the land and the same shall by virtue of this Act vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(v) The Court may order that the costs of the proceedings and of the application shall be raised by the trustees, by legal mortgage of the land or any part thereof, and paid either wholly or partially into Court or to the trustees;

(vi) The Court may act on such evidence as appears to be sufficient, without investigating the title to the land.

Partition by trustees for

As from the commencement of the Property Act the only *express* (*v*) power to partition is that conferred on the trustees for sale by sect. 28 (3) of the Property Act (*x*).

Partition by agreement. sale.

(*u*) L. P. Act, s. 207, and 7th Sched.

(*v*) It is suggested that the persons beneficially interested under the trust for sale, if all of full age and collectively entitled absolutely in possession to the entirety of the land or the proceeds of sale thereof, could effect a partition *by agreement* and call upon the trustees to give effect to such partition by appropriate conveyances of the legal estate.

(*x*) Below, p. 171.

Section iii.—*Tenancies in common after the commencement of the Act.*

The Property Act contains provisions dealing with the creation or disposition of undivided shares after the commencement of that Act.

Sect. 34 of the Act provides as follows:—

Effect of future dispositions to tenants in common.

34.—(1) An undivided share in land shall not be capable of being created except as provided by the Settled Land Act, 1925, or as hereinafter mentioned.

(2) Where, after the commencement of this Act, land is expressed to be conveyed to any persons in undivided shares and those persons are of full age, the conveyance shall (notwithstanding anything to the contrary in this Act) operate as if the land had been expressed to be conveyed to the grantees, or, if there are more than four grantees, to the four first named in the conveyance, as joint tenants upon the statutory trusts hereinafter mentioned and so as to give effect to the rights of the persons who would have been entitled to the shares had the conveyance operated to create those shares:

Provided that, where the conveyance is made by way of mortgage the land shall vest in the grantees or such four of them as aforesaid for a term of years absolute (as provided by this Act) as joint tenants subject to cesser on redemption in like manner as if the mortgage money had belonged to them on a joint account, but without prejudice to the beneficial interests in the mortgage money and interest.

(3) A devise bequest or testamentary appointment, coming into operation after the commencement of this Act, of land to two or more persons in undivided shares shall operate as a devise bequest or appointment of the land to the trustees (if any) of the will for the purposes of the Settled Land Act, 1925, or, if there are no such trustees, then to the personal representatives of the testator, and in each case (but without prejudice to the rights and powers of the personal representatives for purposes of administration) upon the statutory trusts hereinafter mentioned.

(4) Any disposition purporting to make a settlement of an undivided share in land shall only operate as a settlement of a corresponding share of the net proceeds of sale and of the rents and profits until sale of the entirety of the land.

The "statutory trusts" referred to in this section are those defined by sect. 35 of the Property Act (*y*).

(*y*) Above, p. 152.

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The reference in sub-paragraph (1) to the Settled Land Act, 1925, is to sect. 36 of that Act, which is as follows:—

Undivided shares to take effect behind a trust for sale of the land.

36.—(1) If and when, after the commencement of this Act, settled land is held in trust for persons entitled in possession under a trust instrument in undivided shares, the trustees of the settlement (if the settled land is not already vested in them) may require the estate owner in whom the settled land is vested (but in the case of a personal representative subject to his rights and powers for purposes of administration), at the cost of the trust estate, to convey the land to them, or assent to the land vesting in them as joint tenants, and in the meantime the land shall be held on the same trusts as would have been applicable thereto if it had been so conveyed to or vested in the trustees.

(2) If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement, the land shall be held by them (subject to any incumbrances affecting the settled land which are secured by a legal mortgage, but freed from any incumbrances affecting the undivided shares or not secured as aforesaid, and from any interests, powers and charges subsisting under the trust instrument which have priority to the trust for the persons entitled to the undivided shares) upon the statutory trusts.

(3) If the estate owner refuses or neglects for one month after demand in writing to convey the settled land so held in trust in undivided shares in manner aforesaid, or if by reason of his being outside the United Kingdom or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the Court is satisfied that the conveyance cannot otherwise be made, or cannot be made without undue delay or expense, the Court may, on the application of the trustees of the settlement, make an order vesting the settled land in them on the statutory trusts.

(4) An undivided share in land shall not be capable of being created except under a trust instrument or under the Law of Property Act, 1925, and shall then only take effect behind a trust for sale.

(5) Nothing in this section affects the priority *inter se* of any incumbrances whether affecting the entirety of the land or an undivided share.

(6) For the purposes of this section land held upon the statutory trusts shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same, with power to postpone the sale of the whole or any part thereof, and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale, after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the rights of the persons interested in the settled land.

(7) The provisions of this section bind the Crown.

As from the commencement of the Property Act, the only authorised tenancy in common in "land" (*z*) is in legal easements, as provided by sub-sect. (2) of the following section of the Act:— Easements enjoyed in common.

187.—(1) Where an easement, right or privilege for a legal estate is created, it shall enure for the benefit of the land to which it is intended to be annexed. Legal easements.

(2) Nothing in this Act affects the right of a person to acquire, hold or exercise an easement, right or privilege over or in relation to land for a legal estate in common with any other person, or the power of creating or conveying such an easement, right or privilege.

An easement, right or privilege "for a legal estate" means "an easement, right or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute" (*a*).

Section iv.—*Undivided shares not in possession.*

Paragraph 2 of Part IV. of the First Schedule to the Property Act provides as follows:— L. P. Act, 1st Sched. Part IV. para. 2.

2. Where undivided shares in land, created before the commencement of this Act, fall into possession after such commencement, and the land is not settled land when the shares fall into possession, the personal representatives (subject to their rights and powers for purposes of administration) or other estate owners in whom the entirety of the land is vested shall, by an assent or a conveyance, give effect to the foregoing provisions of this Part of this Schedule in like manner as if the shares had fallen into possession immediately before the commencement of this Act, and in the meantime the land shall be held on the statutory trusts.

This paragraph applies only where the land is *not* settled land. Where the land *is* settled land, the provisions of sect. 36 of the Settled Land Act (*b*) will apply.

The only remaining paragraph of this Part of the First Schedule is paragraph 3, which provides that this Part of this Schedule shall not, "save as hereinafter mentioned" (*c*), apply Ib. para. 3

(*z*) For the definition of "land" in the L. P. Act, and that it includes easements, see Table of Definitions, above, Part I., Chap. VII.
(*a*) See L. P. Act, s. 1 (2) (a), above, p. 98.
(*b*) Above, p. 160.
(*c*) There appear to be no provisions to which these words can apply.

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to party structures and open spaces within the meaning of the next succeeding Part (namely, Part V. now about to be referred to) of this Schedule.

Section v.—*Party structures and open spaces.*

Part V. of the First Schedule to the Property Act contains the following provisions:—

L. P. Act, 1st Sched. Part V. "Provisions as to party structures and open spaces."

1. Where, immediately before the commencement of this Act, a party wall or other party structure is held in undivided shares, the ownership thereof shall be deemed to be severed vertically as between the respective owners, and the owner of each part shall have such rights to support and of user over the rest of the structure as may be requisite for conferring rights corresponding to those subsisting at the commencement of this Act.

2. Where, immediately before the commencement of this Act, an open space of land (with or without any building used in common for the purposes of any adjoining land) is held in undivided shares, in right whereof each owner has rights of access and user over the open space, the ownership thereof shall vest in the Public Trustee on the statutory trusts which shall be executed only with the leave of the Court, and, subject to any order of the Court to the contrary, each person who would have been a tenant in common shall, until the open space is conveyed to a purchaser, have rights of access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting.

3. Any person interested may apply to the Court for an order declaring the rights and interests under this Part of this Schedule, of the persons interested in any such party structure or open space, or generally may apply in relation to the provisions of this Part of this Schedule, and the Court may make such order as it thinks fit.

In connection with this Part of the Schedule must be read the following section of the Property Act:—

Party structures.

38.—(1) Where under a disposition or other arrangement which, if a holding in undivided shares had been permissible, would have created a tenancy in common, a wall or other structure is or is expressed to be made a party wall or structure, that structure shall be and remain severed vertically as between the respective owners, and the owner of each part shall have such rights to support and user over the rest of the structure as may be requisite for conferring rights corresponding to those which would have subsisted if a valid tenancy in common had been created.

(2) Any person interested may, in case of dispute, apply to the Court for an order declaring the rights and interests under this section of the persons interested in any such party structure, and the Court may make such order as it thinks fit.

CHAPTER VI.

JOINT TENANCIES IN LAND.

Sect. 36 of the Property Act provides as follows:—

Joint tenancies.

36.—(1) Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held on trust for sale, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity.

(2) No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants:

Provided that, where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon under the trust for sale affecting the land the net proceeds of sale, and the net rents and profits until sale, shall be held upon the trusts which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

(3) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants no severance of a mortgage term or trust estate, so as to create a tenancy in common, shall be permissible.

Settled land.

It will be noticed that so far as "legal estates" (*a*) are concerned, sub-sect. (1) and the proviso to sub-sect. (2) of this section do not apply to a legal estate which is "settled land" (*a*), that is, land which is or is deemed to be the subject of a "settlement" (*a*).

The legal estate which is the subject of a settlement (not being a settlement on trust for sale) must, as a general rule,

(*a*) See Table of Definitions, above, Part I., Chap. VII.

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be vested in the "tenant for life" (*b*) or "statutory owner" (*b*) upon the trusts of the settlement (*c*). Under the Settled Land Act, if there are two or more persons beneficially entitled as joint tenants under a settlement to possession of settled land for their joint lives, they together constitute the tenant for life for the purposes of that Act (*d*). The interests of such joint tenants for life are equitable interests (*b*); and, according to the *primâ facie* meaning of the first part of sub-sect. (2) of the above sect. 36, there would seem to be nothing to prevent them from severing their joint tenancy *qua* their beneficial interests. If this be the true construction, then, upon such severance, they would become tenants in common, and, *primâ facie*, the provisions of sect. 36 of the Settled Land Act (*e*) would come into operation.

The solution of the difficulty may be either that the first part of sub-sect. (2) of sect. 36 of the Property Act, equally with the proviso to that sub-section, applies only in the case of unsettled land, or that, by virtue of sect. 104 (1) of the Settled Land Act (*f*), no dealing by a "tenant for life," which expression includes the persons together constituting the tenant for life, with his beneficial interest under the settlement (*g*), can deprive him of his statutory powers as tenant for life.

Part VI. of the Transitional Provisions (*h*) contained in the First Schedule to the Property Act provides as follows:—

Conversion of tenancies by entireties into joint tenancies.

Every tenancy by entireties existing immediately before the commencement of this Act shall, but without prejudice to any beneficial interest, as from such commencement be converted into a joint tenancy.

If by a gift or grant taking effect before the commencement (*i*) of the Married Women's Property Act, 1882 (*k*), freeholds should have been granted to A. and B. (husband and wife) and their heirs, they would have taken an estate in

(*b*) See Table of Definitions, above, Part I., Chap. VII.
(*c*) See below, Part IV., Chap. I.
(*d*) S. L. Act, s. 19 (1, 2), below, p. 262.
(*e*) Above, p. 160.
(*f*) Below, Part IX., Section IX.
(*g*) Not amounting to a surrender and extinction of his interest under sect. 105 of the S. L. Act, below, Part IX., Section IX.
(*h*) Above, p. 23.
(*i*) The 1st January, 1883.
(*k*) Stat. 45 & 46 Vict. c. 75.

fee simple *by entireties*, that is, neither of them could dispose of any part of the inheritance without the other's concurrence, and unless they both agreed in making a disposition, each had to run the risk of gaining the whole by survivorship or losing the whole by dying first (*l*).

This was the consequence of the rule of law by which husband and wife were considered as one person.

As from the commencement of the Property Act this rule is abolished by the following section of that Act:—

Rights of husband and wife.

37. A husband and wife shall, for all purposes of acquisition of any interest in property, under a disposition (*m*) made or coming into operation after the commencement of this Act, be treated as two persons.

(*l*) See Wms. Real Prop. 333, 338, 339, 347, 23rd ed., and Treatise, Vol. I., p. 893, n. (*b*); Goodeve's Law of Real Property, pp. 233-4, 5th ed.

(*m*) For the definition of "disposition" in the L. P. Act, and that it includes dispositions whether *inter vivos* or testamentary, see Table of Definitions, above, Part I., Chap. VII.

CHAPTER VII.

DISPOSITIONS ON TRUST FOR SALE.

Section i.—*Introductory.*

Relevant enactments.

THE subject of dispositions on trust for sale is dealt with in sects. 23 to 33 (inclusive) of the Property Act.

"Land."

These sections relate only to trusts for sale of "land" (*a*).

"Purchaser."

"Property."

They form part of Part I. of the Act, in which Part, it will be remembered, "purchaser" (*a*) only means a person who acquires an interest in or charge on "property" (*a*) for money or money's worth.

The provisions of this Part of the Act relating to trustees for sale apply to personal representatives holding on trust for sale, but without prejudice to their rights and powers for purposes of administration (*b*).

Section ii.—*Repeals and re-enactments.*

The following sections are re-enactments, with or without amendment, of certain repealed sections (*c*) of the Conveyancing Act, 1911:—

Duration of trusts for sale.

Sect. 23 re-enacts, without amendment, sub-sects. (3) and (4) of the repealed sect. 10.

Trust for sale of mortgaged property where right of redemption is barred.

Sect. 31 re-enacts the repealed sect. 9 without substantial amendment, except that sub-sect. (4) of the repealed section is replaced by the following sub-section of sect. 31:—

(4) Where the mortgage money is capital money for the purposes of the Settled Land Act, 1925, the trustees shall, if the tenant for life

(*a*) See Table of Definitions, above, Part I., Chap. VII., for the definitions of "land," "purchaser," "property," "trust for sale," and "trustees for sale."

(*b*) L. P. Act, s. 33. As to when personal representatives, as such, hold land on trust for sale, see A. E. Act, s. 33 (1), below, p. 441.

(*c*) See above, p. 17.

or statutory owner so requires, instead of selling any land forming the whole or part of such property, execute such subsidiary vesting deed (*d*) with respect thereto as would have been required if the land had been acquired on a purchase with capital money.

The reference in this sub-section to the "tenant for life" (*e*) or "statutory owner" (*e*) appears to show that the section applies, not only where the mortgaged property, the right to redeem which is barred, forms part of the securities subject to a settlement on trust for sale, but also where it is an investment representing capital money arising under the Settled Land Act, 1925, under a settlement strictly so called (*f*).

Sub-sect. (3) of sect. 31, reproducing, without amendment, sub-sect. (3) of the repealed sect. 9, is as follows:—

(3) This section does not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions.

Election to take land unconverted.

This sub-section appears to be a clear recognition of the right of a person absolutely entitled in possession to the proceeds of sale of land held upon trust for sale to elect to take the land unconverted, and supports, to some extent, the suggestion made above (*g*) that a class of persons so entitled could effect a partition by mutual agreement for the purpose of taking the land unconverted.

Sect. 32 replaces, with amendments, sub-sects. (1) and (2) of the repealed sect. 10, and is as follows:—

Implied trust for sale in personalty settlements.

32.—(1) Where a settlement of personal property or of land held upon trust for sale contains a power to invest money in the purchase of land, such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale; and the net rents and profits until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied in like manner as the income of investments representing the purchase-money would be payable or applicable if a sale had been made and the proceeds had been duly invested in personal estate.

(*d*) As to subsidiary vesting deeds, see below, Part IV., Chap. IV., p. 295.

(*e*) See Table of Definitions, above, Part I., Chap. VII.

(*f*) See the passage "Nature of settlements on trust for sale," above, p. 155.

(*g*) P. 158, note (*v*).

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(2) This section applies to settlements (including wills) coming into operation after the thirty-first day of December, nineteen hundred and eleven, and does not apply to capital money arising under the Settled Land Act, 1925, or money liable to be treated as such.

The repealed sub-sect. (1) began with the words "Where a settlement within the meaning of sect. 63 of the Settled Land Act, 1882, or other settlement of property as personal estate, contains," &c.

S. 63 of S. L. Act, 1882, and s. 7 of S. L. Act, 1884, repealed and not re-enacted.

Both sect. 63 of the Settled Land Act, 1882, and sect. 7 ("Powers given by sect. 63 to be exercised only with leave of Court") of the Settled Land Act, 1884, are repealed (*h*), and neither of them is re-enacted. Sects. 28 and 29 of the Property Act take the place of these repealed sections by conferring on trustees for sale the powers specified in sub-sect. (1) of sect. 28, and by enabling them to delegate certain of those powers (but not including the power to sell) to a beneficiary, as provided by sect. 29.

Section iii.—*New enactments.*

Sects. 24 to 30 (inclusive) of the Property Act embody what appears to be new law.

Sect. 24 is as follows:—

Appointment of trustees of dispositions on trust for sale.

24.—(1) The persons having power to appoint new trustees of a conveyance of land on trust for sale shall be bound to appoint the same persons (if any) who are for the time being trustees of the settlement of the proceeds of sale, but a purchaser shall not be concerned to see whether the proper persons are appointed to be trustees of the conveyance of the land.

(2) This section applies whether the settlement of the proceeds of sale or the conveyance on trust for sale comes into operation before or after the commencement of this Act.

There may be cases in which the trusts of the proceeds of sale and of the rents and profits until sale are declared by the same instrument by which the land is conveyed on trust for sale; and that this may be so is recognised by sub-sect. (1) of sect. 27 (*i*).

(*h*) See above, p. 18.
(*i*) Below, p. 170.

Sect. 25 is as follows:—

Power to postpone sale.

25.—(1) A power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears.

(2) Where there is a power to postpone the sale, then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion, for any indefinite period; nor shall a purchaser of a legal estate be concerned in any case with any directions respecting the postponement of a sale.

(3) The foregoing provisions of this section apply whether the trust for sale is created before or after the commencement or by virtue of this Act.

(4) Where a disposition or settlement coming into operation after the commencement of this Act contains a trust either to retain or sell land the same shall be construed as a trust to sell the land with power to postpone the sale.

Sect. 26 is as follows:—

Consents to the execution of a trust for sale.

26.—(1) If the consent of more than two persons is by the disposition made requisite to the execution of a trust for sale of land, then, in favour of a purchaser, the consent of any two of such persons to the execution of the trust or to the exercise of any statutory or other powers vested in the trustees for sale shall be deemed sufficient.

(2) Where the person whose consent to the execution of any such trust or power is expressed to be required in a disposition is not sui juris or becomes subject to disability, his consent shall not, in favour of a purchaser, be deemed to be requisite to the execution of the trust or the exercise of the power; but the trustees shall, in any such case, obtain the separate consent of the parent or testamentary or other guardian of an infant or of the committee or receiver (if any) of a lunatic or defective.

(3) The trustees for sale shall, so far as practicable, give effect to the wishes of the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale, or, in case of dispute, of the majority (according to the value of their combined interests) of such persons, but a purchaser shall not be concerned to see that such wishes are complied with.

(4) This section applies whether the trust for sale is created before or after the commencement or by virtue of this Act.

For the meanings of "committee," "lunatic" and "defective" in sub-sect. (2), reference should be made to the Table of Definitions (*j*).

(*j*) Part I., Chap. VII.

Part III. Chap. VII.

Sect. 27 is as follows:—

Purchaser not to be concerned with the trusts of the proceeds of sale which are to be paid to two or more trustees or to a trust corporation.

27.—(1) A purchaser of a legal estate from trustees for sale shall not be concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale (whether made to attach to such proceeds by virtue of this Act or otherwise), or affecting the rents and profits of the land until sale, whether or not those trusts are declared by the same instrument by which the trust for sale is created.

(2) Notwithstanding anything to the contrary in a disposition on trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money arising under the disposition shall not be paid to or applied by the direction of fewer than two persons as trustees of the disposition, except where the trustee is a trust corporation, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for or direct the application of the proceeds of sale or other capital money aforesaid; nor, except where capital money arises on a transaction, render it necessary to have more than one trustee.

It will be seen that a sole personal representative, although not a "trust corporation" (*k*), is empowered, when acting *as such* (*l*), to give valid receipts for or direct the application of the proceeds of sale or other capital money arising under the disposition; and, further, that a sole trustee, although not a trust corporation, can act in the trusts, *e.g.*, receive and apply the rents and profits, except where capital money arises on a transaction.

The above restriction on the power of a sole trustee, not being a trust corporation, to give valid receipts should be read in conjunction with sect. 14 of the Trustee Act (*m*).

Sect. 28 is as follows:—

Powers of management, &c. conferred on trustees for sale.

28.—(1) Trustees for sale shall, in relation to land or to manorial incidents and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925, including in relation to the land the powers of management conferred by that Act during a minority: and (subject to any express trust to the contrary) all capital money arising under the said powers shall, unless paid or applied for any purpose authorised by the Settled Land Act, 1925, be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

(*k*) See Table of Definitions, above, Part I., Chap. VII.

(*l*) As to when a personal representative, as such, holds land on trust for sale, see A. E. Act, s. 33, below, p. 441.

(*m*) Below, p. 361.

All land acquired under this subsection shall be conveyed to the trustees on trust for sale.

The powers conferred by this subsection shall be exercised with such consents (if any) as would have been required on a sale under the trust for sale, and when exercised shall operate to overreach any equitable interests or powers which are by virtue of this Act or otherwise made to attach to the net proceeds of sale as if created by a trust affecting those proceeds.

(2) Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs and insurance and other outgoings shall be paid or applied, except so far as any part thereof may be liable to be set aside as capital money under the Settled Land Act, 1925, in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested.

(3) Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may, with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale:—

(*a*) partition the land remaining unsold or any part thereof; and

(*b*) provide (by way of mortgage or otherwise) for the payment of any equality money;

and, upon such partition being arranged, the trustees for sale shall give effect thereto by conveying the land so partitioned in severalty (subject or not to any legal mortgage created for raising equality money) to persons of full age and either absolutely or on trust for sale or, where any part of the land becomes settled land, by a vesting deed, or partly in one way and partly in another in accordance with the rights of the persons interested under the partition, but a purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given:

Provided that—

(i) If a share in the net proceeds belongs to a lunatic or defective, the consent of his committee or receiver shall be sufficient to protect the trustees for sale:

(ii) If a share in the net proceeds is affected by an incumbrance the trustees for sale may either give effect thereto or provide for the discharge thereof by means of the property allotted in respect of such share, as they may consider expedient.

(4) If a share in the net proceeds is absolutely vested in an infant, the trustees for sale may act on his behalf and retain land (to be held on trust for sale) or other property to represent his share, but in other respects the foregoing power shall apply as if the infant had been of full age.

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(5) This section applies to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of this Act.

"Manorial incidents."

In regard to the "manorial incidents" (*n*) mentioned in sub-sect. (1), reference should be made to the provisions of the Property Acts, 1922 and 1924, relating to the enfranchisement of copyholds and the extinguishment of manorial incidents (*o*).

As to the construction of sub-s. (3).

Sub-sect. (3) of this section appears to give rise to some difficulties of construction. There is first a reference to a class consisting of "persons of full age" (*p*) in whom the net proceeds of sale have become "absolutely vested" (not "absolutely vested *in possession*"). Then the consent is required of a class consisting of "the persons, if any, of full age, not being annuitants, interested *in possession* in the net rents and profits of the land until sale." The description of this latter class is such as to suggest that it is not the same class as that first mentioned, but consists of the person or persons, if any, of full age, entitled to a life or other limited interest (other than as a mere annuitant) in priority to the absolutely vested interests.

If so, then the power to partition would appear to be exercisable, while the absolutely vested interests are still reversionary; in which case, notwithstanding the partition and the conveyances in severalty consequent thereon, the trustees would have to retain control of the entirety of the land in order to receive the net rents and profits for the protection and benefit of the person or persons entitled to any such limited interest.

On the other hand, the proviso (i) to sub-sect. (3) suggests that the consent required is that of the persons absolutely entitled, such consent, in the case of a "lunatic" (*q*) or "defective" (*q*), being given by his "committee" (*q*) or receiver.

(*n*) See Table of Definitions, above, Part I., Chap. VII.
(*o*) Above, Part II., Chaps. I. and II.
(*p*) Sub-sect. (4) shows that the power to partition arises, notwithstanding that a share in the net proceeds is absolutely vested in an infant. The words, therefore, "of full age," must be read as qualified by this sub-section.
(*q*) For the meaning of these expressions see Table of Definitions, above, Part I., Chap. VII.

"Derivative trust."

It will be seen that the sub-section applies whether or not the absolutely vested shares are subject to a derivative trust. The following case is suggested as an example of a derivative trust. A., one of the persons absolutely entitled, or who subsequently becomes absolutely entitled to an undivided share in the net proceeds of sale, by his marriage settlement settles his share on trusts for himself for life with trusts over. *Qua* the share so settled, the settlement will be a settlement of pure personalty (*r*), and not a settlement of land. Subsequently, A.'s share being absolutely vested in possession, a partition is effected under sub-sect. (3), and land is allotted to A. in severalty in respect of his share. The result appears to be that, as regards A.'s share, the marriage settlement is now a settlement of land of which A. is the tenant for life, and the trustees for sale must give effect to the partition by conveying the legal estate in the allotted land to A. by a vesting deed.

If this be the true view, it is difficult to see why land allotted, on a partition, in respect of a share in the net proceeds of sale which is absolutely vested in an infant should not become "settled land" by virtue of sects. 1 (1) (ii) (d) and 2 of the Settled Land Act (*s*) and be vested in the "statutory owner" (*t*), instead of being retained by the trustees on trust for sale, as provided by sub-sect. (4).

Sect. 29 is as follows:—

Delegation of powers of management by trustees for sale.

29.—(1) The powers of and incidental to leasing, accepting surrenders of leases and management, conferred on trustees for sale whether by this Act or otherwise, may, until sale of the land, be revocably delegated from time to time, by writing, signed by them, to any person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the net rents and profits of the land during his life or for any less period: and in favour of a lessee such writing shall, unless the contrary appears, be sufficient evidence that the person named therein is a person to whom the powers may be delegated, and the production of such writing shall, unless the contrary appears, be sufficient evidence that the delegation has not been revoked.

(2) Any power so delegated shall be exercised only in the names and on behalf of the trustees delegating the power.

(3) The persons delegating any power under this section shall not, in relation to the exercise or purported exercise of the

(*r*) See L. P. Act, s. 34 (4), above, p. 159.
(*s*) Below, Part IV., pp. 258, 259.
(*t*) See Table of Definitions, above, Part I., Chap. VII.

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power, be liable for the acts or defaults of the person to whom the power is delegated, but that person shall, in relation to the exercise of the power by him, be deemed to be in the position and to have the duties and liabilities of a trustee.

47 & 48 Vict. c. 18.

(4) Where, at the commencement of this Act, an order made under section seven of the Settled Land Act, 1884, is in force, the person on whom any power is thereby conferred shall, while the order remains in force, exercise such power in the names and on behalf of the trustees for sale in like manner as if the power had been delegated to him under this section.

Sect. 30 is as follows:—

Powers of Court where trustees for sale refuse to exercise powers.

30. If the trustees for sale refuse to sell or to exercise any of the powers conferred by either of the last two sections, or any requisite consent cannot be obtained, any person interested may apply to the Court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustees for sale to give effect thereto, and the Court may make such order as it thinks fit.

CHAPTER VIII.

INFANTS AND LEGAL ESTATES.

Section i.—*Introductory.*

Disability of infant extends to legal estates only.

As we have seen (*a*), a legal estate is not, after the commencement of the Property Act, capable of being held by an infant. This disability applies only to "legal estates," and there appears to be nothing in either the Property Act or the Settled Land Act which prevents an infant from acquiring or holding any equitable beneficial interest which he could have acquired or held if of full age.

The Property Act, accordingly, contains provisions (1) defining in whom a legal estate vested in an infant immediately before the commencement of that Act is to vest, when that Act comes into operation; and (2) defining what is to be the effect of future dispositions purporting to vest a legal estate in an infant.

Section ii.—*Provisions as to Legal Estate vested in Infant.*

L. P. Act, 1st Sched. Part III.

Provisions as to the vesting of "legal estates" (*b*) so vested *immediately before the commencement of the Act* are contained in Part III. of the transitional provisions (*c*) contained in the First Schedule to the Property Act.

Vesting of legal estate vested in infant at commencement of Act.

This Part of this Schedule deals with four "cases," though that expression is not used in the text of this Part of the Schedule, and is adopted here for convenience only.

Four "cases."

Case I. L. P. Act, 1st Sched. Part III. para. 1.

Case I. (dealt with in paragraph 1) arises where immediately before the commencement of the Property Act a legal estate

(*a*) L. P. Act, s. 1 (6), above, p. 98.
(*b*) See L. P. Act, s. 1, above, p. 97, and Table of Definitions, above, Part I., Chap. VII.
(*c*) Above, p. 23.

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One or more infants beneficially entitled.

in land is vested in one or more infants *beneficially*, or where immediately after such commencement a legal estate in land would by virtue of that Act (*d*) have become vested in one or more infants *beneficially* if he or they had been of full age.

In this case the legal estate shall vest in the manner provided by the Settled Land Act (*e*).

Case II. L. P. Act, 1st. Sched. Part III. para. 2. Infant beneficially entitled jointly with one or more persons of full age.

Case II. (dealt with in paragraph 2) arises where immediately before such commencement a legal estate in land is vested in an infant *jointly* with one or more other persons of full age *beneficially*.

In this case the legal estate shall, by virtue of the Act, vest in that other person or those other persons on the "statutory trusts" (*f*), but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale (*g*).

Paragraph 2 is qualified by the following proviso:—

> Provided that, if by virtue of this paragraph the legal estate becomes vested in one person as trustee, then, if no other person is able and willing to do so, the parents or parent testamentary or other guardian of the infant, if respectively able and willing to act, (in the order named) may, and at the request of any person interested shall (subject to the costs being provided for) by writing appoint an additional trustee and thereupon by virtue of this Act the legal estate shall vest in the additional trustee and existing trustee as joint tenants.

The meaning of the proviso appears to be that where the joint beneficial owners comprise only one person of full age, and by virtue of this paragraph the legal estate becomes vested in such one person as trustee upon the statutory trusts, then the proviso is to come into operation. The case, therefore, contemplated by the proviso is quite distinct from Case IV. (*h*).

The reason for the appointment of an additional trustee is, no doubt, that a sole trustee for sale, if not a trust corporation,

(*d*) *E.g.*, by virtue of the provisions as to the vesting of legal estates contained in Part II. of the Schedule, above, p. 106.
(*e*) See para. 3 of the transitional provisions (above, p. 23) contained in the Second Schedule to the S. L. Act, below, p. 293. See also sect. 26 of that Act, below, p. 253.
(*f*) See L. P. Act, s. 35, above, p. 152.
(*g*) See L. P. Act, s. 36, above, p. 163.
(*h*) Below, p. 178.

cannot give valid receipts for or direct the application of the proceeds of sale or other capital money arising under the trust (*i*).

Case III. (dealt with in paragraph 3) is as follows:—

Case III. L. P. Act, 1st Sched. Part III. para. 3. Infant sole personal representative, &c.

3. Where, immediately before the commencement of this Act, a legal estate in land is vested solely in an infant as a personal representative, or a trustee of a settlement, or on trust for sale or on any other trust, or by way of mortgage, or where immediately after the commencement of this Act a legal estate in land would by virtue of any provision of this Act or otherwise have been so vested if the infant were of full age, the legal estate and the mortgage debt (if any) and interest thereon shall, by virtue of this Act, vest in the Public Trustee, pending the appointment of trustees as hereinafter provided—

(*a*) as to the land, upon the trusts, and subject to the equities affecting the same (but in the case of a mortgage estate for a term of years absolute in accordance with this Act); and

(*b*) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially interested therein:

Provided that—

(i) The Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the persons interested in the land or the income thereof, or in the mortgage debt or interest thereon (as the case may be), which request may be made on behalf of the infant by his parents or parent, or testamentary or other guardian (in the order named), and those persons may, in the order aforesaid (if no other person is able and willing to do so) appoint new trustees in the place of the Public Trustee, and thereupon by virtue of this Act the land or term and mortgage money shall vest in the trustees so appointed upon the trusts and subject to the equities aforesaid: Provided that the Public Trustee may, before he accepts the trust, but subject to the payment of his costs, convey to a person of full age who becomes entitled;

(ii) After the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the Court) be appointed in his place without his consent;

(iii) Any person interested in the land or the income thereof, or in the mortgage debt or in the interest thereon (as the case may be), may, at any time during the minority, apply to the Court for the appointment of trustees of the trust,

(*i*) See L. P. Act, s. 27 (2), above, p. 170.

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and the Court may make such order as it thinks fit, and if thereby new trustees are appointed the legal estate (but in the case of a mortgage estate only for a term of years absolute as aforesaid) and the mortgage debt (if any) and interest shall, by virtue of this Act, vest in the trustees as joint tenants upon the trusts and subject to the equities aforesaid;

(iv) Neither a purchaser of the land nor a transferee for money or money's worth of the mortgage shall be concerned in any way with the trusts affecting the legal estate or the mortgage debt and interest thereon;

(v) The vesting in the Public Trustee of a legal estate or a mortgage debt by virtue of this Part of this Schedule shall not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.

Case IV. L. P. Act, 1st Sched. Part III. para. 4. Infant personal representative, &c., jointly with one or more persons of full age.

Case IV. (dealt with in paragraph 4) is as follows:—

4. Where, immediately before the commencement of this Act, a legal estate in land is vested in two or more persons jointly as personal representatives, trustees, or mortgagees, and anyone of them is an infant, or where immediately after the commencement of this Act a legal estate in land would, by virtue of this Act, or otherwise have been so vested if the infant were of full age, the legal estate in the land with the mortgage debt (if any) and the interest thereon shall, by virtue of this Act, vest in the other person or persons of full age—

(*a*) as to the legal estate, upon the trusts and subject to the equities affecting the same (but in the case of a mortgage estate only for a term of years absolute as aforesaid); and

(*b*) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially interested therein;

but neither a purchaser of the land nor a transferee for money or money's worth of the mortgage shall be concerned in any way with the trusts affecting the legal estate or the mortgage debt and interest thereon:

Provided that, if, by virtue of this paragraph, the legal estate and mortgage debt, if any, become vested in a sole trustee, then, if no other person is able and willing to do so, the parents or parent, testamentary or other guardian of the infant (in the order named) may, and at the request of any person interested shall, (subject to the costs being provided for) by writing appoint a new trustee in place of the infant, and thereupon by virtue of this Act the legal estate and mortgage money shall vest in the new and continuing trustees upon the trusts and subject to the equities aforesaid.

Paragraph 5 is as follows:—

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Ib. para. 5. Application of Part III. of the Schedule.

5. This Part of this Schedule does not affect the estate or powers of an administrator durante minore ætate, nor, where there is a tenant for life or statutory owner of settled land, operate to vest the legal estate therein in the Public Trustee.

Section iii.—*Future dispositions of Legal Estates in favour of Infants.*

Sect. 19 of the Property Act provides as follows:—

Effect of conveyances of legal estates to infants.

19.—(1) A conveyance of a legal estate in land to an infant alone or to two or more persons jointly both or all of whom are infants, shall have such operation as is provided for in the Settled Land Act, 1925.

(2) A conveyance of a legal estate in land to an infant, jointly with one or more other persons of full age, shall operate to vest the legal estate in the other person or persons on the statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale, or affect the right of a tenant for life or statutory owner to have settled land vested in him.

(3) The foregoing provisions of this section do not apply to conveyances on trust or by way of mortgage.

(4) A conveyance of a legal estate to an infant alone or to two or more persons jointly, both or all of whom are infants, on any trusts, shall operate as a declaration of trust and shall not be effectual to pass any legal estate.

(5) A conveyance of a legal estate in land to an infant jointly with one or more other persons of full age on any trusts shall operate as if the infant had not been named therein, but without prejudice to any beneficial interest in the land intended to be thereby provided for the infant.

(6) A grant or transfer of a legal mortgage of land to an infant shall operate only as an agreement for valuable consideration to execute a proper conveyance when the infant attains full age, and in the meantime to hold any beneficial interest in the mortgage debt in trust for the persons for whose benefit the conveyance was intended to be made:

Provided that, if the conveyance is made to the infant and another person or other persons of full age, it shall operate as if the infant had not been named therein, but without prejudice to any beneficial interest in the mortgage debt intended to be thereby provided for the infant.

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The reference in sub-sect. (1) of this section to the Settled Land Act, 1925, is to sect. 27 of that Act (*k*).

Sect. 20 of the Property Act is as follows:—

Infants not to be appointed trustees.

20. The appointment of an infant to be a trustee in relation to any settlement or trust shall be void, but without prejudice to the power to appoint a new trustee to fill the vacancy.

(*k*) Below, Part IV., p. 297.

CHAPTER IX.

EQUITABLE INTERESTS AND POWERS.

Section i.—*Introductory.*

Definitions.

As we have seen (*a*), the Property Act introduces a new and fundamental distinction between "legal estates" and "legal powers," and "equitable interests" and "equitable powers" (*b*).

Relevant enactments.

Part IV. of the Property Act contains a group of sections (*c*) dealing with "equitable interests and things in action," and there are other sections dealing, more or less directly, with the subject of equitable interests (*d*).

Section ii.—*Entailed Interests.*

One of the main changes introduced by the Property Act, with a view to "assimilate" the law of real and personal estate (which was one of the proposed objects of the Law of Property Act, 1922 (*e*)), is the power which it gives to create "an entailed interest" in personal, as well as in real, estate.

L. P. Act, s. 130.

This power is conferred by the following section of the Property Act:—

Creation of entailed interests in real and personal property.

130.—(1) An interest in tail or in tail male or in tail female or in tail special (in this Act referred to as "an entailed interest") may be created by way of trust in any property, real or personal, but only by the like expressions as those by which before the commencement of this Act a similar estate tail could have been created by deed (not being

(*a*) L. P. Act, s. 1, above, p. 97.
(*b*) For the definitions of these expressions see Table of Definitions, above, Part I., Chap. VII.
(*c*) Sects. 130 to 138 (inclusive).
(*d*) These are referred to in the course of this Chapter.
(*e*) See above, p. 1.

an executory instrument) in freehold land, and with the like results, including the right to bar the entail either absolutely or so as to create an interest equivalent to a base fee, and accordingly all statutory provisions relating to estates tail in real property shall apply to entailed interests in personal property.

Personal estate so entailed (not being chattels settled as heirlooms) may be invested, applied, and otherwise dealt with as if the same were capital money or securities representing capital money arising under the Settled Land Act, 1925, from land settled on the like trusts.

(2) Expressions contained in an instrument coming into operation after the commencement of this Act, which, in a will, or executory instrument coming into operation before such commencement, would have created an entailed interest in freehold land, but would not have been effectual for that purpose in a deed not being an executory instrument, shall (save as provided by the next succeeding section) operate in equity, in regard to property real or personal, to create absolute, fee simple or other interests corresponding to those which, if the property affected had been personal estate, would have been created therein by similar expressions before the commencement of this Act.

(3) Where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is, after the commencement of this Act, directed to be enjoyed or held with, or upon trusts corresponding to trusts affecting, land in which, either before or after the commencement of this Act an entailed interest has been created, and is subsisting, such direction shall be deemed sufficient to create a corresponding entailed interest in such personal estate.

(4) In default of and subject to the execution of a disentailing assurance or the exercise of the testamentary power conferred by this Act, an entailed interest (to the extent of the property affected) shall devolve as an equitable interest, from time to time, upon the persons who would have been successively entitled thereto as the heirs of the body (either generally or of a particular class) of the tenant in tail or other person, or as tenant by the curtesy, if the entailed interest had, before the commencement of this Act, been limited in respect of freehold land governed by the general law in force immediately before such commencement, and such law had remained unaffected.

(5) Where personal chattels are settled without reference to settled land on trusts creating entailed interests therein, the trustees, with the consent of the usufructuary for the time being if of full age, may sell the chattels or any of them, and the net proceeds of any such sale shall be held in trust for and shall go to the same persons successively, in the same manner and for the same interests, as the chattels sold would have been held and gone if they had not been sold, and the income of investments representing such proceeds of sale shall be applied accordingly.

(6) An entailed interest shall only be capable of being created by a settlement of real or personal property or the proceeds of sale thereof

(including the will of a person dying after the commencement of this Act), or by an agreement for a settlement in which the trusts to affect the property are sufficiently declared.

(7) In this Act where the context so admits "entailed interest" includes an estate tail (now made to take effect as an equitable interest) created before the commencement of this Act.

Sub-s. (1). What expressions required to create an entailed interest.

Before the commencement of the Act an estate tail similar to an entailed interest could be created by a deed (not being an executory instrument (*f*)) only by the use of apt words of limitation, that is, in the case, say, of an estate in tail male by the use after the name of the donee of the words "and the heirs male of his body" or "in tail male" (*g*).

By virtue of sub-sect. (1), therefore, of this section, and subject to sub-sects. (3) and (6), the like expressions must, after the commencement of the Act, be used in order to create an entailed interest, whether in real or in personal estate.

Effect of sub-s. (2).

Before the commencement of the Act an estate tail in freehold land could be created by will by expressions other than the strict words of limitation required in "a deed not being an executory instrument." Thus, a devise simply to *a person and his issue,* or even to a person and his issue *living at his death,* undoubtedly conferred on such person an estate tail (*h*).

Again, it was a general rule, though capable of yielding to the context, that a bequest of personalty confers an absolute interest wherever the language of the will would create an estate tail of land (*i*). Thus, a simple bequest to A. and his issue, which, if the subject of disposition were real estate, would indisputably make A. tenant in tail, confers on him the absolute ownership in personalty (*k*).

The effect, then, of sub-sect. (2) appears to be that where, in an instrument coming into operation after the commencement of the Act, you find expressions, not being strict words

(*f*) For the distinction between "executed trusts" and "executory trusts," see Laws of England, Vol. 28, pp. 8, 9, 22 to 24.
(*g*) See C. Act, 1881, s. 51, now replaced by the L. P. Act, s. 60 (4), above, p. 104.
(*h*) See Jarman on Wills, 6th ed., Vol. II., pp. 1930, 1931.
(*i*) See *ib.* p. 1202.
(*k*) See *ib.* p. 1198.

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of limitation, which in a will or executory instrument coming into operation before such commencement would have created an entailed interest in freehold land, such expressions will (save as provided by the next succeeding section (*l*)) operate in equity, in regard to property *whether real or personal*, to create absolute, fee simple or other interests corresponding to those which, *if the property aforesaid had been personal estate*, would have been created therein by similar expressions before the commencement of the Act.

Sub-s. (1). "Statutory provisions."

By sub-sect. (i), all statutory provisions relating to estates tail in real property shall apply to entailed interests in personal property. It is thought that this means only such of those statutory provisions as remain in force.

Thus, by the Ninth Schedule (*m*) to the Law of Property (Amendment) Act, 1924, "the Fines and Recoveries Act, 1833, as amended, remains in force in regard to dealings with entailed interests as equitable interests."

By sect. 10 of the same Act (*n*) the enactments set out in the Tenth Schedule to that Act, "being enactments which, as respects England and Wales, are rendered obsolete by the principal Act," are repealed to the extent specified in the third column of that Schedule; and, on reference to that Schedule, it will be found that numerous sections of the Fines and Recoveries Act, 1833, are repealed in whole or in part.

Moreover, the last mentioned Act is amended by the Property Act itself, which repeals (*o*) sect. 32 of the Fines and Recoveries Act, 1833, as respects settlements made or coming into operation after the commencement of the Property Act, and, by sect. 133 (*p*), abolishes enrolment of disentailing assurances, and, by sect. 167 (*q*), abolishes acknowledgments by married women.

Sub-s. (1). "Personal estate."

It seems that "personal estate" for the purposes of this section includes leasehold land, the proceeds of sale of land

(*l*) *I.e.*, s. 131, below, p. 186.
(*m*) Above, p. 5.
(*n*) Above, p. 4. [See note on p. 6.]
(*o*) L. P. Act, s. 207, and Seventh Schedule.
(*p*) Below, p. 187. (*q*) Below, Part IX., Section XVI.

directed to be sold, and pure personalty, and, in particular, chattels, whether or not directed to be held as heirlooms.

Therefore, in a "disposition on trust for sale" (*r*), the proceeds of sale may be so settled as to create therein an entailed interest.

Sub-s. (4). Testamentary power.

The Property Act (*s*) effects a change in the law by conferring on a tenant in tail of full age a power to dispose by will of all property of which, whether actually or constructively, he is tenant in tail in possession at his death.

Entailed interests suffered to descend.

It will be seen that this sub-section applies only to entailed interests which are suffered to descend, and that they will descend in like manner as an entailed interest limited in respect of freehold land would have descended under the general law in force immediately before the commencement of the Act. In the case, therefore, of an entailed interest of a married woman which is suffered to descend, the surviving husband will be entitled to an estate by the curtesy in any case where, before the commencement of the Act, he would have been entitled to such an estate in land in which his wife had an equitable estate tail (*t*).

Tenant by the curtesy.

Sub-s. (6). How entailed interests may be created.

It will be seen that the instruments by which an entailed interest may be created include "an agreement for a settlement in which the trusts to affect the property are sufficiently declared." An agreement for a settlement is *primâ facie* an "executory instrument." It is thought, therefore, that the words "in which," &c. mean that the trusts are so clearly defined that there is no room for the intervention of a Court of equity to mould them according to the presumed intention of the settlor (*u*). Indeed, to be consistent with sub-sects. (1) and (2), it would seem that the entailed interest agreed to be created must be defined with technical words of limitation.

Agreement for settlement.

(*r*) Above, Part III., Chap. VII.
(*s*) By sect. 176, below, p. 188.
(*t*) See Goodeve's Law of Real Property, p. 102, 5th ed.
(*u*) See *Egerton* v. *Earl Brownlow*, 6 H. L. C. 1.

Section iii.—*Limitations in favour of "Heirs."*

Sect. 131 of the Property Act provides as follows:—

Abolition of the rule in *Shelley's Case*.

131. Where by any instrument coming into operation after the commencement of this Act an interest in any property is expressed to be given to the heir or heirs or issue or any particular heir or any class of the heirs or issue of any person in words which, but for this section would, under the rule of law known as the Rule in Shelley's case, have operated to give to that person an interest in fee simple or an entailed interest, such words shall operate in equity as words of purchase and not of limitation, and shall be construed and have effect accordingly, and in the case of an interest in any property expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person or persons shall take as would in the case of freehold land have answered that description under the general law in force before the commencement of this Act.

The rule stated.

The rule in *Shelley's Case*, as stated in that case itself (*v*), is as follows:—

"It is a rule in law when the ancestor by any gift or conveyance takes an estate of freehold, and in the same gift or conveyance an estate is limited either mediately or immediately to his heirs in fee or in tail, that always in such cases 'the heirs' are words of limitation of the estate and not of purchase."

Effect of section.

Under the section, in the case of instruments coming into operation after the commencement of the Act, any words which under the rule would have operated as words of limitation will operate as words of purchase.

Thus, under the rule a limitation of freehold land to or in trust for A. for life and after his death to or in trust for his heirs gave A. an estate in fee simple; whereas a like limitation, in an instrument coming into operation after the commencement of the Act, whether of real or personal estate, will give A. a life estate only, and, after his death, an equitable estate in fee simple or, in the case of personal estate, an absolute equitable interest to the person or persons who, under the general law in force before the commencement of the Act, would in the case of freehold land have answered the description of his "heirs" at the time of A.'s death.

(*v*) 1 Rep. 93 (b). See the rule discussed in *Van Grutten* v. *Foxwell*, (1897) A. C. 658; and especially in the speech of Lord Macnaghten, pp. 667 *et seq.*

The following section is closely connected with the subject-matter of sect. 131, inasmuch as it deals with the case where, in a limitation in favour of the "heir," either general or special, of a deceased person, if limited in respect of freehold land before the commencement of the Act, such "heir" would have taken an estate *by purchase*. The section is as follows:—

As to heirs taking by purchase.

132.—(1) A limitation of real or personal property in favour of the heir, either general or special, of a deceased person which, if limited in respect of freehold land before the commencement of this Act, would have conferred on the heir an estate in the land by purchase, shall operate to confer a corresponding equitable interest in the property on the person who would, if the general law in force immediately before such commencement had remained unaffected, have answered the description of the heir, either general or special, of the deceased in respect of his freehold land, either at the death of the deceased or at the time named in the limitation, as the case may require.

(2) This section applies whether the deceased person dies before or after the commencement of this Act, but only applies to limitations or trusts created by an instrument coming into operation after such commencement.

Section iv.—*Dispositions of Entailed Interests.*

Under the old law an estate tail could be barred only by an assurance *duly enrolled*, and no estate tail could be disposed of by *will*.

The law in both these respects is altered by the Property Act.

Sect. 133 of the Act is as follows:—

Abolition of enrolment of disentailing assurances, &c. 3 & 4 Will. 4, c. 74.

133.—(1) Every assurance or instrument executed or made after the commencement of this Act which, under the provisions of sections forty-one, forty-six, fifty-eight, fifty-nine, seventy-one, and seventy-two of the Fines and Recoveries Act, 1833, or otherwise under that Act (as amended by this Act), would have been required to be enrolled in the Central Office in England, shall be as effectual for all purposes, without such enrolment, as if it had been duly enrolled within the time prescribed by the said Act for such enrolment.

(2) In this section "assurance" includes a vesting order operating as a disentailing assurance, whether made for barring an estate tail or enlarging a base fee or otherwise.

(3) This section applies to entailed interests authorised to be created by this Act as well as to estates tail created before the commencement of this Act.

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The words "as amended by this Act" in sub-sect. (1) probably refer to the enactment whereby, in effect, all statutory provisions relating to estates tail in real property are extended to entailed interests in personal property (*x*).

Sect. 176 of the Act is as follows:—

Power for tenant in tail in possession to dispose of property by specific devise or bequest.

176.—(1) A tenant in tail of full age shall have power to dispose by will, by means of a devise or bequest referring specifically either to the property or to the instrument under which it was acquired or to entailed property generally—

(*a*) of all property of which he is tenant in tail in possession at his death; and

(*b*) of money (including the proceeds of property directed to be sold) subject to be invested in the purchase of property, of which if it had been so invested he would have been tenant in tail in possession at his death;

in like manner as if, after barring the entail, he had been tenant in fee-simple or absolute owner thereof for an equitable interest at his death, but, subject to and in default of any such disposition by will, such property shall devolve in the same manner as if this section had not been passed.

(2) This section applies to entailed interests authorised to be created by this Act as well as to estates tail created before the commencement of this Act, but does not extend to a tenant in tail who is by statute restrained from barring or defeating his estate tail, whether the land or property in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services or not, or to a tenant in tail after possibility of issue extinct, and does not render any interest which is not disposed of by the will of the tenant in tail liable for his debts or other liabilities.

(3) In this section "tenant in tail" includes an owner of a base fee in possession who has power to enlarge the base fee into a fee-simple without the concurrence of any other person.

(4) This section only applies to wills executed after the commencement of this Act, or confirmed or republished by codicil executed after such commencement.

It will be noticed (1) that an entailed interest can be disposed of by will only by means of a devise or bequest "referring specifically either to the property or to the instrument under which it was acquired or to entailed property generally"; (2) that, if so disposed of, it will devolve, as if the tenant in tail, after barring the entail, had been tenant in fee simple or absolute owner thereof for an equitable interest at his death;

(*x*) L. P. Act, s. 130 (1), above, p. 181.

and (3) that, "subject to" and in default of any such disposition by will, the entailed interest will devolve in the same manner as if this section had not been passed, and will not be liable for the debts or other liabilities of the tenant in tail.

Partial exercise of testamentary power.

The words "subject to" suggest that an entailed interest will devolve as such, if and so far as not effectually devised or bequeathed under this section; if, for example, the trusts declared by the testator should not exhaust the entire beneficial interest, or should wholly or partially fail.

Section v.—*Executory Limitations.*

Sect. 134 of the Property Act replaces, with some modifications, sect. 10 (*y*) of the Conveyancing Act, 1882, and is as follows:—

Restriction on executory limitations.

134.—[(1) Where there is a person entitled to—]

(*a*) an equitable interest in land for an estate in fee-simple or for any less interest not being an entailed interest, or

(*b*) any interest in other property, not being an entailed interest,

[with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years of the class on default or failure whereof the limitation over was to take effect.

[C. A. 1882, s. 10.]

(2) This section applies where the executory limitation is contained in an instrument coming into operation after the thirty-first day of December, eighteen hundred and eighty-two, save that, as regards instruments coming into operation before the commencement of this Act, it only applies to limitations of land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life.]

Section vi.—*Equitable Waste.*

Sect. 135 of the Property Act, reproducing *the effect of* sect. 25 (3) (*z*) of the Judicature Act, 1873, is as follows:—

Equitable waste.

135. An equitable interest for life without impeachment of waste does not confer upon the tenant for life any right to commit waste of

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(*y*) Repealed; see above, p. 17.
(*z*) Repealed, L. P. Act, s. 207, and Seventh Schedule.

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the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such equitable interest.

The change of language from that of the repealed section (*a*) is due to the fact that under the Property Act every interest for life is an *equitable* interest (*b*).

Section vii.—*Legal assignments of things in action.*

Sect. 136 of the Property Act reproduces, without substantial amendment, sect. 25 (6) (*c*) of the Judicature Act, 1873.

Section viii.—*Priority of equitable interests.*

Priority of equitable interests in land under the old law.

Under the old law, where an equitable interest in land of any tenure was incumbered or disposed of by successive instruments, the priority of the grantees, as between themselves, was determined *primâ facie* by the order in time of the creation of their respective interests (*d*).

Equitable things in action.

But, in the case of successive dealings with an equitable chose in action, such as an equitable interest in pure personal estate or in the proceeds of sale of land held upon trust for sale, the rule was that a later assignee could gain priority over an earlier assignee, if he had no notice of the earlier assignment when his own was created, by giving prior notice to the trustees in whom the property was vested (*d*).

Rule in *Dearle* v. *Hall*.

This rule is known as the rule in *Dearle* v. *Hall* (*e*). Under the old law the notice need not be in writing, and the question of whether a trustee had notice of an assignment was a question of fact (*f*).

Extension of rule by L. P. Act.

This rule is made applicable to dealings with equitable interests in land, capital money, and securities representing

(*a*) The repealed section is set out and discussed in Goodeve's Law of Property, p. 140, 5th ed.
(*b*) See L. P. Act, s. 1, above, p. 97.
(*c*) Repealed, L. P. Act, s. 207, and Seventh Schedule.
(*d*) See Ashburner's Principles of Equity, pp. 182—184, where the rule in *Dearle* v. *Hall* and the mode and effect of giving notice are discussed.
(*e*) 3 Russ. 1.
(*f*) See Ashburner, *ubi sup.*, p. 183; and *Lloyd* v. *Banks*, L. R. 3 Ch. 488, at p. 490.

capital money effected after the commencement of the Property Act by sect. 137 of that Act, and the same section effects considerable alterations in the law as regards notices given to, or received by, a trustee after such commencement as respects any dealing with an equitable interest in real or personal property. The section, as will be seen, is one which requires close attention, as affecting, in cases to which it applies, the priority of purchasers of equitable interests and the validity, effect, and mode of giving notices of dealings with equitable interests. As will also be seen, the section does not affect any priority acquired before the commencement of the Act.

The section is as follows:—

Dealings with life interests, reversions and other equitable interests.

137.—(1) The law applicable to dealings with equitable things in action which regulates the priority of competing interests therein, shall, as respects dealings with equitable interests in land, capital money, and securities representing capital money effected after the commencement of this Act, apply to and regulate the priority of competing interests therein.

This subsection applies whether or not the money or securities are in Court.

(2)—(i) In the case of a dealing with an equitable interest in settled land, capital money or securities representing capital money, the persons to be served with notice of the dealing shall be the trustees of the settlement; and where the equitable interest is created by a derivative or subsidiary settlement, the persons to be served with notice shall be the trustees of that settlement.

(ii) In the case of a dealing with an equitable interest in the proceeds of sale of land or in the rents and profits until sale the persons to be served with notice shall, as heretofore, be the trustees for sale.

(iii) In any other case the person to be served with notice of a dealing with an equitable interest in land shall be the estate owner of the land affected.

The persons on whom notice is served pursuant to this subsection shall be affected thereby in the same manner as if they had been trustees of personal property out of which the equitable interest was created or arose.

This subsection does not apply where the money or securities are in Court.

(3) A notice, otherwise than in writing, given to, or received by, a trustee after the commencement of this Act as respects any dealing with an equitable interest in real or personal property, shall not affect the priority of competing claims of purchasers in that equitable interest.

(4) Where, as respects any dealing with an equitable interest in real or personal property—

(*a*) the trustees are not persons to whom a valid notice of the dealing can be given; or

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(*b*) there are no trustees to whom a notice can be given; or

(*c*) for any other reason a valid notice cannot be served, or cannot be served without unreasonable cost or delay;

a purchaser may at his own cost require that—

(i) a memorandum of the dealing be endorsed, written on or permanently annexed to the instrument creating the trust;

(ii) the instrument be produced to him by the person having the possession or custody thereof to prove that a sufficient memorandum has been placed thereon or annexed thereto.

Such memorandum shall, as respects priorities, operate in like manner as if notice in writing of the dealing had been given to trustees duly qualified to receive the notice at the time when the memorandum is placed on or annexed to the instrument creating the trust.

(5) Where the property affected is settled land, the memorandum shall be placed on or annexed to the trust instrument and not the vesting instrument.

Where the property affected is land held on trust for sale, the memorandum shall be placed on or annexed to the instrument whereby the equitable interest is created.

(6) Where the trust is created by statute or by operation of law, or in any other case where there is no instrument whereby the trusts are declared, the instrument under which the equitable interest is acquired or which is evidence of the devolution thereof shall, for the purposes of this section, be deemed the instrument creating the trust.

In particular, where the trust arises by reason of an intestacy, the letters of administration or probate in force when the dealing was effected shall be deemed such instrument.

(7) Nothing in this section affects any priority acquired before the commencement of this Act.

(8) Where a notice in writing of a dealing with an equitable interest in real or personal property has been served on a trustee under this section, the trustees from time to time of the property affected shall be entitled to the custody of the notice, and the notice shall be delivered to them by any person who for the time being may have the custody thereof; and subject to the payment of costs, any person interested in the equitable interest may require production of the notice.

(9) The liability of the estate owner of the legal estate affected to produce documents and furnish information to persons entitled to equitable interests therein shall correspond to the liability of a trustee for sale to produce documents and furnish information to persons entitled to equitable interests in the proceeds of sale of the land.

(10) This section does not apply until a trust has been created, and in this section "dealing" includes a disposition by operation of law.

Effect of subsection (1).

The effect of sub-sect. (1) of the section appears to be not to *alter* the law therein referred to, but merely to *extend* it to

dealings, effected after the commencement of the Act, with equitable interests in land, capital money, and securities (*f*) representing capital money, and, as regards such money or securities, whether or not the same are in Court. It is thought, therefore, that a subsequent assignee of an equitable interest, who took with notice of a prior assignment, will not obtain priority over the prior assignee by giving prior notice in accordance with the section.

Funds in Court.

The provision that sub-sect. (2) is not to apply where the money or securities are in Court is in accordance with the existing law under which, where the dealing is with an equitable interest in a fund in Court, notice to the trustees of the instrument under which the interest arises is wholly ineffectual, and protection or priority can be obtained only by a stop order on the fund (*g*).

Power to nominate a trust corporation to receive notices.

Sect. 138 of the Property Act provides by sub-sect. (1) that by any settlement or other instrument creating a trust a "trust corporation" may be nominated to whom notices of dealings affecting real or personal property may be given, whether or not under sect. 137, and that in default of such nomination the trustees (if any) of the instrument, or the Court on the application of any person interested, may make the nomination. The rest of the same section states in considerable detail what are to be the effect and consequences of any such nomination.

Section ix.—*Other Provisions.*

There are two other sections of the Property Act which deal directly with the subject of equitable interests, namely, sects. 3 and 4.

Sub-sect. (1) of sect. 3 (*h*) is as follows:—

Manner of giving effect to equitable interests and powers.

3.—(1) All equitable interests and powers in or over land shall be enforceable against the estate owner of the legal estate affected in manner following (that is to say):—

(*a*) Where the legal estate affected is settled land, the tenant for

(*f*) Securities include stocks, funds and shares; L. P. Act, 1925, s. 205 (1) (xxv).

(*g*) *Mutual Life Assurance Society* v. *Langley*, 32 C. D. 460.

(*h*) The section does not affect a purchaser of a legal estate taking free from an equitable interest or power: see sub-sect. (6).

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life or statutory owner shall be bound to give effect to the equitable interests and powers in manner provided by the Settled Land Act, 1925;

(*b*) Where the legal estate affected is vested in trustees for sale—

(i) The trustees shall stand possessed of the net proceeds of sale after payment of costs and of the net rents and profits of the land until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the same respectively, of which they have notice, and whether created before or after the disposition upon trust for sale, according to their respective priorities:

(ii) Where, by reason of the exercise of any equitable power or under any trust affecting the proceeds of sale, any principal sum is required to be raised, or any person of full age becomes entitled to require a legal estate in the land to be vested in him in priority to the trust for sale, then, unless the claim is satisfied out of the net proceeds of sale, the trustees for sale shall (if so requested in writing) be bound to transfer or create such legal estates, to take effect in priority to the trust for sale, as may be required for raising the money by way of legal mortgage or for giving legal effect to the rights of the person so entitled:

Provided that, if the proceeds of sale are held in trust for persons of full age in undivided shares absolutely free from incumbrances affecting undivided shares, those persons cannot require the land to be conveyed to them in undivided shares, but may (subject to effect being given by way of legal mortgage to incumbrances affecting the entirety) require the same to be vested in any of them (not exceeding four) as joint tenants on trust for sale; and if the conveyance purports to transfer the land to any of them in undivided shares or to more than four such persons, it shall operate only as a transfer to them or (if more than four) to the four first named therein as joint tenants on trust for sale:

(*c*) Where the legal estate affected is neither settled land nor vested in trustees for sale, the estate owner shall be bound to give effect to the equitable interests and powers affecting his estate of which he has notice according to their respective priorities. This provision does not affect the priority or powers of a legal mortgagee, or the powers of personal representatives for purposes of administration.

The reference in sub-sect. (1) (a) is to sect. 16 of the Settled Land Act (*i*).

(*i*) Below, Part IV., p. 301.

Sub-sect. (2) provides for giving effect by means of a legal mortgage to an agreement, charge or lien, which ought to have priority over the trust for sale.

Charges prior to the trust for sale.

Sub-sect. (3) deals with the case where for any reason a person becomes entitled as against the estate owner to require a legal estate to be vested in him.

Creation of legal estates.

Sub-sect. (4) authorises an application to the Court if any question arises whether any and what legal estate ought to be transferred or created; and sub-sect. (5) empowers the Court to make a vesting order transferring or creating a legal estate "in the manner provided by this Act" (*j*) if satisfied that the transaction cannot otherwise be effected.

Applications to the Court.

Sect. 4 of the Property Act is as follows:—

Creation and disposition of equitable interests.

4.—(1) Interests in land validly created or arising after the commencement of this Act, which are not capable of subsisting as legal estates, shall take effect as equitable interests, and, save as otherwise expressly provided by statute, interests in land which under the Statute of Uses or otherwise could before the commencement of this Act have been created as legal interests, shall be capable of being created as equitable interests:

Provided that, after the commencement of this Act (and save as hereinafter expressly enacted), an equitable interest in land shall only be capable of being validly created in any case in which an equivalent equitable interest in property real or personal could have been validly created before such commencement.

(2) All rights and interests in land may be disposed of, including—

(*a*) [a contingent, executory or future] equitable [interest in any land, or a possibility coupled with an interest in any land, whether or not the object of the gift or limitation of such interest or possibility be ascertained; [R. P. Act, 1845, s. 6.]

(*b*) a right of entry, into or upon land whether immediate or future, and whether vested or contingent.]

(3) All rights of entry affecting a legal estate which are exercisable on condition broken or for any other reason may after the commencement of this Act, be made exercisable by any person and the persons deriving title under him, but, in regard to an estate in fee simple (not being a rentcharge held for a legal estate) only within the period authorised by the rule relating to perpetuities.

Exceptions.

In sub-sect. (1) the provisions referred to by the words "save as otherwise expressly provided by statute" probably

(*j*) See L. P. Act, s. 9.

include those under which undivided shares can only take effect behind a trust for sale (*k*); and the provisions referred to by the words "save as hereinafter expressly provided" probably include those under which an entailed interest may be created in leasehold land.

Contingent and other like interests and rights.

Sub-sect. (2), as regards clauses (a) and (b) thereof, reproduces the substance of sect. 6 (*l*) of the Real Property Act, 1845, except that the repealed section applies to dispositions by deed only, and saves estates tail and the requirements of the Fines and Recoveries Act, 1833, relative to dispositions by married women. In sub-sect. (2) "disposed of" means whether by assurance *inter vivos* or by will (*m*).

Rights of entry for condition broken.

Sub-sect. (3) applies to rights of entry exercisable on condition broken or for any other reason. Sect. 6 of the Real Property Act, 1845, did not apply to a right of re-entry for condition broken, but only where the party had a right to recover lands and his right of entry and nothing but that remained (*n*).

Construction of subs. (3).

It is thought that by a right of entry "affecting" a legal estate is meant "a right of entry exercisable *adversely* to a legal estate," and that the qualifying words at the end of the sub-section mean that where the estate entitled to the *benefit* of the right of entry is an estate in fee simple (not being a rentcharge held for a legal estate) the right of entry can be made exercisable only within the period authorised by the rule relating to perpetuities.

Rentcharge.

Unless this be the true construction, the question arises in what circumstances a rentcharge held for a legal estate can be "affected" by a right of re-entry.

Sect. 122 of the Property Act gives power to charge a rentcharge or annual sum on another rentcharge or annual sum (not being rent incident to a reversion); but the remedy under that

(*k*) Above, p. 160.

(*l*) Repealed, L. P. Act, s. 207, and Seventh Schedule.

(*m*) See Table of Definitions, above, Part I., Chap. VII.

(*n*) See *Hurst* v. *Bishop*, 8 Exch. 675; *Hunt* v. *Remnant*, 9 Exch. 635; *Jenkins* v. *Jones*, L. R. 9 Q. B. D. 131.

section for enforcing payment of a rentcharge or annual sum so charged is not a right of entry but the appointment of a receiver.

Perpetuities.

Before the commencement of the Property Act it was open to doubt whether the rule against perpetuities applied to conditions of entry limited on gifts of land at common law (*o*). This sub-section makes the rule applicable after the commencement of the Act.

Rights of entry, by whom exercisable.

Before the commencement of the Act a right of entry could only be reserved to the grantor and his heirs, and it existed in their favour as a possibility of reverter (*p*). Under this sub-section the right may, after the commencement of the Act, be made exercisable by *any* person and the persons deriving title under him.

Rights of re-entry in leases.

It is thought that this sub-section has no application to a right of re-entry or forfeiture for breach by a lessee of a condition in a lease. The devolution of such a right is regulated by sect. 142 (*q*) of the Property Act.

(*o*) See Treatise, Vol. I., pp. 636 *et seq.*
(*p*) See Laws of England, vol. 24, p. 170.
(*q*) Re-enacting, with some amendments, sect. 10 of the C. Act, 1881, as amended by sect. 2 of the C. Act, 1911.

CHAPTER X.

PURCHASERS AND NOTICE.

Section i.—*Definitions.*

"Purchaser." As we have seen (*a*), "purchaser" in the Property Act means a purchaser in good faith for valuable consideration, and includes a lessee (*b*), mortgagee (*b*) or other person who for valuable consideration acquires an interest in property (*b*), except that in Part I. of the Act (*c*) and elsewhere where so expressly provided "purchaser" only means a person who acquires an interest in or charge on property for money or money's worth; and in reference to a legal estate (*b*) includes a chargee by way of legal mortgage (*b*); and where the context so requires "purchaser" includes an intending purchaser; "purchase" has a meaning corresponding with that of "purchaser"; and "valuable consideration" includes marriage, but does not include a nominal consideration in money.

"Money's worth." Marriage is not a valuable consideration in "money's worth" (*d*).

In a contract for the exchange of land, the land taken in exchange is consideration "in money's worth" for the land given in exchange, and is so treated in the Property Act (*e*).

"Notice." In the Property Act "notice" includes constructive notice.

(*a*) See Table of Definitions, above, Part I., Chap. VII.
(*b*) For the meaning of these expressions in the L. P. Act, see Table of Definitions, *ubi sup.*
(*c*) Part I. of the L. P. Act comprises sects. 1 to 39.
(*d*) See Stroud's Judicial Dictionary, 2nd ed., pp. 1220, 1221, and cases there cited.
(*e*) See, *e.g.*, sect. 42 (4) and (9), above, pp. 140, 141.

Section ii.—*Constructive Notice.*

Sect. 199 of the Property Act provides as follows:—

Restrictions on constructive notice.

199.—[(1) A purchaser shall not be prejudicially affected by notice of]—

(i) any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of the non-registration thereof;

(ii) [any] other [instrument] or matter or any [fact or thing unless—

(*a*) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(*b*) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

(2) Paragraph (ii) of the last subsection shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced in the same manner and to the same extent as if that paragraph had not been enacted.

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

(4) This section applies to purchases made either before or after the commencement of this Act].

So much of this section as is above set out in square brackets is a re-enactment, without any modification, of sect. 3 of the Conveyancing Act, 1882 (*f*).

Paragraph (i) of sub-sect. (1) of the section is new and is part of the system of the new conveyancing under which a purchaser of a legal estate is to be protected against notice of equities or charges affecting the legal estate, unless they are registered, in cases where they are capable of registration.

(*f*) Set out in the Treatise, Vol. I., p. 233.

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The section, however, is not limited to purchasers of legal estates, but extends to purchasers generally, and whether or not they are purchasers for a consideration in money or money's worth.

It should be borne in mind that in the Property Act, as also in the Settled Land Act, references to registration under the Land Charges Act apply to any registration made under any statute which is by the Land Charges Act to have effect as if the registration had been made under that Act (*g*).

The two sections of the Property Act which have next to be noticed are the corollary of paragraph (i) of sub-sect. (1) of sect. 199.

Section iii.—*Actual Notice.*

Sect. 197 of the Property Act enacts as follows:—

Notice of memorials registered in Middlesex and Yorkshire.

197.—(1) The registration in a local deeds registry of a memorial of any instrument transferring or creating a legal estate or charge by way of legal mortgage, shall be deemed to constitute actual notice of the transfer or creation of the legal estate or charge by way of legal mortgage, to all persons and for all purposes whatsoever, as from the date of registration or other prescribed date, and so long as the registration continues in force.

(2) The registration of a memorial of an instrument not required to be registered does not operate to give notice of such instrument or of the contents thereof.

(3) This section operates without prejudice to the provisions of this Act respecting the making of further advances by a mortgagee (*h*), and only applies to land within the jurisdiction of the registry.

In connection with this section reference should be made to sect. 11 of the Property Act, which is as follows (*i*):—

Registration in Middlesex and Yorkshire as respects legal estates.

11.—(1) It shall not be necessary to register a memorial of any instrument made after the commencement of this Act in any local deeds registry unless the instrument operates to transfer or create a legal estate, or to create a charge thereon by way of legal mortgage;

(*g*) L. P. Act, s. 205 (3); S. L. Act, s. 117 (3); above, p. 25.

(*h*) As to the making of further advances by a mortgagee, see above, p. 127.

(*i*) This section and the subject, generally, of registration in local deeds registries are discussed further in connection with the L. C. Act, below, Part VI., Chap. VI., Section vii.

nor shall the registration of a memorial of any instrument not required to be registered affect any priority.

(2) Probates and letters of administration shall be treated as instruments capable of transferring a legal estate to personal representatives.

(3) Memorials of all instruments capable of transferring or creating a legal estate or charge by way of legal mortgage, may, when so operating, be registered.

It will be noticed that the section applies only to instruments executed *after* the commencement of the Property Act (*k*).

Sect. 198 of the Property Act enacts as follows:—

Registration under the Land Charges Act, 1925, to be notice.

198.—(1) The registration of any instrument or matter under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, in any register kept at the land registry or elsewhere, shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and so long as the registration continues in force.

(2) This section operates without prejudice to the provisions of this Act respecting the making of further advances by a mortgagee (*l*), and applies only to instruments and matters required or authorised to be registered under the Land Charges Act, 1925.

Sect. 200 of the Property Act enacts as follows:—

Notice of restrictive covenants and easements. [C. A. 1911, s. 11].

200.—[(1) Where land having a common title with other land is disposed of to a purchaser (other than a lessee or a mortgagee) who does not hold or obtain possession of the documents forming the common title, such purchaser, notwithstanding any stipulation to the contrary, may require that a memorandum giving notice of any provision contained in the disposition to him restrictive of user of, or giving rights over, any other land comprised in the common title, shall, where practicable, be written or indorsed on, or, where impracticable, be permanently annexed to some one document selected by the purchaser but retained in the possession or power of the person who makes the disposition, and being or forming part of the common title.

(2) The title of any person omitting to require an indorsement to be made or a memorandum to be annexed shall not, by reason only of this enactment, be prejudiced or affected by the omission.

(3) This section does not apply to dispositions of registered land.]

(*k*) As to the law affecting instruments executed *before* such commencement, see Treatise, Vol. I., pp. 361 to 367.

(*l*) As to further advances by a mortgagee, see above, p. 127.

(4) Nothing in this section affects the obligation to register a land charge in respect of—

(*a*) any restrictive covenant or agreement affecting freehold land; or

(*b*) any estate contract; or

(*c*) any equitable easement, liberty or privilege.

The subject of the obligation to register a land charge in respect of the matters mentioned in sub-sect. (4) is discussed hereafter (*m*).

(*m*) See below, Part VI., Chap. VI.

CHAPTER XI.

PROTECTION OF PURCHASERS.

Section 1.—*Property Act*, s. 2.

L. P. Act, s. 2.

THE leading enactment for the protection of purchasers is contained in sect. 2 of the Property Act.

That section protects the "purchaser" (*a*) of a "legal estate" (*a*) from notice, or being affected by notice, of "equitable interests or powers" (*a*), which are capable of being "overreached."

That section is as follows:—

Conveyances overreaching certain equitable interests and powers. 15 Geo. 5, c. 18.

2.—(1) A conveyance to a purchaser of a legal estate in land shall overreach any equitable interest or power affecting that estate, whether or not he has notice thereof, if—

(i) the conveyance is made under the powers conferred by the Settled Land Act, 1925, or any additional powers conferred by a settlement, and the equitable interest or power is capable of being overreached thereby, and the statutory requirements respecting the payment of capital money arising under the settlement are complied with;

(ii) the conveyance is made by trustees for sale and the equitable interest or power is at the date of the conveyance capable of being overreached by such trustees under the provisions of subsection (2) of this section or independently of that subsection, and the statutory requirements respecting the payment of capital money arising under a disposition upon trust for sale are complied with;

(iii) the conveyance is made by a mortgagee or personal representative in the exercise of his paramount powers, and the equitable interest or power is capable of being overreached by such conveyance, and any capital money arising from the transaction is paid to the mortgagee or personal representative;

(*a*) See Table of Definitions, above, Part I., Chap. VII. In sect. 2, and elsewhere in Part I. of the L. P. Act, "purchaser" means only a purchaser "for money or money's worth."

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(iv) the conveyance is made under an order of the court and the equitable interest or power is bound by such order, and any capital money arising from the transaction is paid into, or in accordance with the order of, the court.

(2) Where the legal estate affected is not, when the equitable interest or power is created, subject to a trust for sale or a settlement, then, if the estate owner, whether before or after the commencement of this Act, disposes of his estate to trustees upon trust for sale, and at the date of a conveyance made, after such commencement, under the disposition upon trust for sale the trustees (whether original or substituted) are either—

(a) two or more individuals approved or appointed by the court or the successors in office of the individuals so approved or appointed; or

(b) a trust corporation,

such equitable interest or power shall, notwithstanding any stipulation to the contrary, be overreached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale.

(3) The following equitable interests and powers are excepted from the operation of subsection (2) of this section, namely—

(i) Any equitable interest protected by a deposit of documents relating to the legal estate affected;

(ii) The benefit of any covenant or agreement restrictive of the user of land;

(iii) Any easement, liberty, or privilege over or affecting land and being merely an equitable interest (in this Act referred to as an "equitable easement");

(iv) The benefit of any contract (in this Act referred to as an "estate contract") to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase, a right of pre-emption, or any other like right;

(v) Any equitable interest protected by registration under the Land Charges Act, 1925, other than—

(a) an annuity within the meaning of Part II. of that Act;

(b) a limited owner's charge or a general equitable charge within the meaning of that Act.

(4) Subject to the protection afforded by this section to the purchaser of a legal estate, nothing contained in this section shall deprive a person entitled to an equitable charge of any of his rights or remedies for enforcing the same.

(5) So far as regards the following interests, created before the commencement of this Act (which accordingly are not within the provisions of the Land Charges Act, 1925), namely—

15 Geo. 5, c. 22.

(a) the benefit of any covenant or agreement restrictive of the user of the land;

(b) any equitable easement;

(c) the interest under a puisne mortgage within the meaning of the Land Charges Act, 1925, unless and until acquired under a transfer made after the commencement of this Act;

(d) the benefit of an estate contract, unless and until the same is acquired under a conveyance made after the commencement of this Act;

a purchaser of a legal estate shall only take subject thereto if he has notice thereof, and the same are not overreached under the provisions contained or in the manner referred to in this section.

Subs. (1) (i). Conveyance under S. L. Act.

Sect. 72 (*b*) of the Settled Land Act prescribes what is to be the operation of a conveyance by a tenant for life under the powers of that Act, and, in particular, what "estates, interests and charges" will be discharged or overreached by such a conveyance.

Receipt for capital money.

The statutory requirements respecting the payment of capital money arising under a settlement are contained in sect. 94 (1) (*c*) of the Settled Land Act, and are that capital money arising under that Act shall not be paid to fewer than two persons as trustees of a settlement, unless the trustee is a "trust corporation" (*d*).

Subs. (1) (ii). Conveyance by trustees for sale.

The words "or independently of that sub-section" in sub-sect. (1) (ii) probably refer to sub-sect. (1) of sect. 27 (*e*) of the Property Act, under which a purchaser of a legal estate from trustees for sale is not concerned with the trusts affecting the proceeds of sale or the rents and profits until sale.

Receipt for proceeds of sale.

The statutory requirements respecting the payment of capital money arising under a disposition on trust for sale are contained in sub-sect. (2) of the last-mentioned section (*e*), and are that, save as therein mentioned in the case of a sole personal representative, the proceeds of sale or other capital money arising under the disposition shall not be paid to or applied by the direction of fewer than two persons as trustees of the disposition, except where the trustee is a "trust corporation" (*d*).

(*b*) Below, p. 326.
(*c*) Below, Part IX., Section IX.
(*d*) See Table of Definitions, above, Part I., Chap. VII.
(*e*) Above, p. 170.

Part III. Chap. XI.

Subs. (1) (iii). Conveyance by mortgagee.

The operation of a conveyance by a mortgagee selling under his statutory or express power of sale is defined by sects. 88 (1) and 89 (1) of the Property Act (*f*).

Conveyance by personal representative.

The powers of personal representatives in regard to the sale and conveyance of land are defined by the Administration Act (*g*).

Subs. (2). Newly created equitable interests or powers.

Sub-sect. (2) is apparently intended to apply to the case where an estate owner, *being absolute owner,* creates *de novo* some equitable interest or power, the creation of which prevents him from disposing of the land *as absolute owner*. No indication is afforded of what sort of equitable interest or power is contemplated. There are *some* equitable interests the creation of which would have the effect of making the land "settled land," *e.g.*, the creation by the absolute owner, on his marriage, of a rentcharge issuing out of the land and payable to his wife or intended wife during the remainder of her life in the event of her surviving him (*h*). It is thought that the sub-section would not apply in such a case.

Subs. (3). Equitable interests and powers not to be overreached.

It is thought that the exceptions specified in this sub-section apply equally whether the trust for sale is created under sub-sect. (2) or independently of that sub-section.

Subss. (3) and (5). Land Charges Act.

The provisions of the Land Charges Act referred to in these sub-sections will be considered hereafter (*i*).

Section ii.—*Other provisions.*

There are other provisions in the Property Act (*k*) for the protection of purchasers, introduced, for the most part, incidentally and to the effect that a purchaser is "not concerned with" the fulfilment of this or that statutory requirement.

Thus it is provided—

S. 17 (1). Death duties.

By sect. 17 (1), that where a charge in respect of death duties is not registered as a land charge, a purchaser of

(*f*) Above, p. 123. (*g*) Below, Part VII.
(*h*) See S. L. Act, s. 1 (1) (v), below, p. 258.
(*i*) Below, Part VI.
(*k*) As also in the Settled Land Act and the Land Charges Act, and, in relation to registered land, in the Registration Act, below, Parts IV., VI. and VIII.

a legal estate shall take free therefrom, unless the charge for duties attached before the commencement of the Act and the purchaser had notice of the facts giving rise to the charge;

S. 24 (1). Appointment of trustees.

By sect. 24 (1), that a purchaser shall not be concerned to see whether the proper persons are appointed to be trustees of a conveyance of land on trust for sale;

S. 25 (2). Power to postpone sale.

By sect. 25 (2), that a purchaser of a legal estate shall not be concerned in any case with any directions concerning the postponement of a sale;

S. 26 (3). Wishes of beneficiaries.

By sect. 26 (3), that a purchaser shall not be concerned to see that the wishes of beneficiaries under a trust for sale are complied with; and

S. 28 (3). Consents to partition.

By sect. 28 (3), that a purchaser shall not be concerned to see or inquire whether any prescribed consent has been given to a partition (*l*).

(*l*) See also as to notice, sect. 44 (5) (7) (8), above, p. 134, and sect. 199, above, p. 199.

CHAPTER XII.

TITLE TO BE SHOWN TO LEGAL ESTATES.

L. P. Act, s. 10.

THIS subject is dealt with in sect. 10 of the Property Act, which is as follows:—

Title to be shown to legal estates.

10.—(1) Where title is shown to a legal estate in land, it shall be deemed not necessary or proper to include in the abstract of title an instrument relating only to interests or powers which will be overreached by the conveyance of the estate to which title is being shown; but nothing in this Part of this Act affects the liability of any person to disclose an equitable interest or power which will not be so overreached, or to furnish an abstract of any instrument creating or affecting the same.

(2) A solicitor delivering an abstract framed in accordance with this Part of this Act shall not incur any liability on account of an omission to include therein an instrument which, under this section, is to be deemed not necessary or proper to be included, nor shall any liability be implied by reason of the inclusion of any such instrument.

Examples of abstracts are contained in the Sixth Schedule to the Property Act and are given statutory authority by sub-sect. (2) of the following section of that Act (*a*):—

Forms of instruments and examples of abstracts.

206.—(1) Instruments in the form of, and using the expressions in the forms given in the Fifth Schedule to this Act, or in the like form or using expressions to the like effect, shall, in regard to form and expression, be sufficient.

(2) Examples of abstracts of title framed in accordance with the enactments which will take effect at the commencement of this Act are contained in the Sixth Schedule to this Act.

Abstracts of title, how framed.

It will be noticed that the examples given are of "abstracts of title framed in accordance with the enactments which will take effect at the commencement of this Act." They are framed, therefore, not merely to illustrate the practical application of sect. 10 of the Property Act, nor, even, of the provisions

(*a*) The forms given in the Fifth Schedule to the L. P. Act, and authorised by sub-sect. (1) of sect. 206, have already been referred to, above, p. 118.

generally of that Act, but so as to accord with, and give effect to, the new system of conveyancing involved in or resulting from the relevant enactments whether of the Property Act or of any other of the Consolidation Acts coming into operation at the same time.

Importance of the examples given.

It follows that the examples given of abstracts of title so framed merit close attention.

Abstracts, how to be framed.

From the note at the head of Specimen No. 1 it will be seen that "the italics show how the abstract is to be framed and what documents are to be abstracted"; and that "after the commencement of this Act the parts not in italics may be ignored."

Use of italics.

It is thought that this note is of general application and that, as must now always be the case, where title is made *after* the commencement of the Act, the parts not in italics may be ignored as *relating only to interests or powers which will be overreached by the conveyance of the estate to which title is being shown* (*b*).

Analysis of Specimen No. 1 in the 6th sched. to the L. P. Act.

It may be useful, as an illustration of the new system of conveyancing, to examine in some detail the epitome of title which is Specimen No. 1 in the Sixth Schedule to the Property Act.

Title to be shown.

To begin with, it will be noticed that the property to which title has to be shown is "Blackacre," and the person whose title has to be shown is John Williams, who first comes on to the title on the 10th June, 1928, and that the title which has to be shown is to a "legal estate," namely, an estate in fee simple absolute in possession free from incumbrances, for it must be assumed that H. Jones, with whose will the title begins, was seised for such an estate at the time of his death.

Transaction requiring title to be shown.

It appears also that the transaction which called for an investigation of the title of John Williams was the purchase of Blackacre by the X. Company under compulsory powers (*c*).

(*b*) See L. P. Act, s. 10 (1), above, p. 208. See, however, the proviso to sub-sect. (2) of sect. 110 of the S. L. Act, below, Part IV., p. 345.

(*c*) As at this time the whereabouts of John Williams was unknown, it must be assumed that there was someone in England who had his title deeds and was authorised to produce them and supply the abstract.

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Epitome of *essential* facts and documents.

If from Specimen No. 1 there be eliminated the notes and the parts not in italics, the epitome of title as there set out reads as follows, the numbers being inserted for convenience only and the writer being responsible for the passages in square brackets:—

10th June, 1897.

1. Will of H. Jones, appointing Maria Jones and W. Jones executors and Settled Land Act trustees.

[*I.e.*, trustees for the purposes of the Settled Land Acts, 1882 to 1890, of the settlement made by the will (hereinafter called "the settlement").]

Devises Blackacre.

To the use that Maria Jones may receive a yearly rentcharge of five hundred pounds for her life, and, subject thereto,

To the use of W. Jones for life with remainder[s over].

4th June, 1898.

2. Death of H. Jones.

1st August, 1898.

3. Will of H. Jones proved.

[Thereupon by virtue of sect. 1 (1) of the Land Transfer Act, 1897, Blackacre vests in the executors as such.]

20th August, 1899.

4. Conveyance by the executors to the uses of the will.

[This or an assent was necessary by virtue of sect. 3 (1) of the Land Transfer Act, 1897. Upon the execution of this conveyance the limitations to uses contained in the will take effect, under the law then in force, *as legal estates*, and the powers and duties of the executors as Settled Land Act trustees arise.]

2nd September, 1915.

5. Appointment of R. and S. to be Settled Land Act trustees of the will in place of Maria Jones and W. Jones, who retire.

[1st January, 1926.]

[The Settled Land and Law of Property Acts, 1925, come into operation, and thereupon—

(i) The settlement becomes a settlement "subsisting at the commencement" of the Settled Land Act, 1925 (*d*).

(ii) The trustees of the settlement for the purposes of the Settled Land Acts, 1882 to 1890, become the

(*d*) S. L. Act, s. 3.

trustees of the settlement for the purposes of the Settled Land Act, 1925 (*e*), or, in other words, "the trustees of the settlement" (*f*).

(iii) The "legal estates" (*g*) subsisting under the settlement, by virtue of the limitations to uses, become "equitable interests" (*h*).

(iv) The "legal estate," *i.e.*, the estate in fee simple in possession, which is the subject of the settlement, vests in W. Jones, the tenant for life (*i*).

(v) Notwithstanding such vesting the trustees of the settlement may, and at the request of the tenant for life, shall, execute a "principal vesting deed" declaring that the legal estate in the settled land is vested in the tenant for life (*k*), and, until such vesting deed is executed, the tenant for life cannot exercise his statutory powers (*l*).]

6. Deed by the Settled Land Act trustees declaring the fee simple is vested in W. Jones on the trusts of the will and stating that they are the trustees of the settlement. 20th January, 1926.

7. Will of W. Jones proved by R. and S. [the trustees of the settlement] in regard to the settled land. 3rd May, 1926.

[This is in pursuance of sect. 22 ("special executors as respects settled land") of the Administration Act (*m*). On the grant of this probate the settled land vests in R. and S. for the legal estate vested in W. Jones as tenant for life at the time of his death (*n*).]

8. Assent by R. and S., as personal representatives, to 3rd January, 1927.

(*e*) S. L. Act, s. 33 (1).
(*f*) *Ibid.*, s. 30 (1).
(*g*) Capable of subsisting, as such, immediately before the commencement of the L. P. Act.
(*h*) L. P. Act, First Schedule, Part I.
(*i*) *Ibid.*, Part II., paras. 3, 5 and 6 (c).
(*k*) S. L. Act, Second Schedule, para. 1 (2), s. 5. For the form of the requisite vesting deed, see *ibid.*, First Schedule, Form No. 1.
(*l*) *Ibid.*, s. 13.
(*m*) Below, Part VII.
(*n*) See A. E. Act, ss. 1, 3 (1) (ii), below, Part VII.

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Frederick Jones in fee, without nominating Settled Land Act trustees.

[The effect of this assent is discussed below (*o*).]

6th February, 1927. 9. Mortgage either by charge by way of legal mortgage (*p*) or for a term of one thousand years (*q*) by Frederick Jones to the Estate Trustees of the C. Assurance Society to secure five thousand pounds and interest.

10th June, 1928. 10. Conveyance by the then Estate Trustees of the C. Assurance Society, under their power of sale as first mortgagees, to John Williams in fee.

[See the note to this conveyance as printed in the Act. As to the operation of the conveyance as passing the fee simple and otherwise, see sect. 88 (1) of the Property Act (*r*). The right to vest the debt and mortgaged property in Estate Trustees by memorial enrolled under a Private Act, as also the right of the X. Company to vest the land in themselves by deed poll under sect. 77 of the Lands Clauses Consolidation Act, 1845 (item 13, below), is preserved by sect. 7 (3) of the Property Act (*s*).]

10th August, 1929. 11. Private Act passed authorising the X. Company to acquire Blackacre under compulsory powers.

15th June, 1930. 12. Statutory declaration as to facts known with reference to John Williams.

16th June, 1930. 13. Deed poll by X. Company (who by their agent also execute in the name of John Williams) under sect. 77 of the Lands Clauses Consolidation Act, 1845, vesting the land in themselves.

[The power to vest land by deed poll conferred by sect. 77 arises, subject to the payment into Court of the purchase-money or compensation payable in respect of the lands taken, where (amongst other cases) the owner of the lands is absent from the kingdom, or cannot, after diligent inquiry, be found. See sect. 76 of the same Act.]

Effect of the rest of specimen No. 1.

On reference to the parts not printed in italics in Specimen No. 1, it will be seen that, at the time of the assent of the

(*o*) P. 213.
(*p*) Above, p. 117.
(*q*) Above, p. 115.
(*r*) Above, p. 123.
(*s*) Below, Chap. XI., p. 219.

3rd January, 1927, Frederick Jones, the eldest son of W. Jones, and, as such, the first tenant in tail under the will of H. Jones, was (1) of full age, or he could not have executed the disentail of the 2nd April, 1926; and (2) absolutely entitled to the settled land, beneficially, free from all limitations, powers, and charges taking effect under the settlement.

S. L. Act, s. 7 (5). Conveyance to person of full age absolutely entitled.

Sub-sect. (5), so far as material to be stated, of sect. 7 of the Settled Land Act provides that, if any person of full age becomes absolutely entitled to the settled land . . . beneficially . . . free from all limitations, powers, and charges taking effect under the settlement, he shall be entitled to require the trustees of the settlement, personal representatives, or other persons in whom the settled land is vested, to convey the land to him . . .

Form of assent.

A form of assent by personal representatives in favour of a person absolutely entitled free from incumbrances is Form No. 8 in the Fifth Schedule to the Property Act.

S. L. Act, s. 110 (5). Purchaser, how far bound by assent.

Sub-sect. (5), so far as material to be stated, of sect. 110 of the Settled Land Act provides that, if . . . an assent relating to land formerly subject to a vesting instrument does not state who are the trustees of the settlement for the purposes of the Act, a purchaser of a legal estate shall be bound and entitled to act on the assumption that the person in whom the land was thereby vested was entitled to the land free from all limitations, powers, and charges taking effect under that settlement, absolutely and beneficially . . . , and that every statement of fact in such . . . assent is correct.

Semble, still entitled to full title.

This sub-section requires the purchaser to assume certain facts, but does not, it is thought, in the absence of express stipulation to the contrary, deprive him of his right to a thirty years' title (*t*); and, in any case, it seems, he would be entitled to an abstract and to production of the vesting instrument to which the land was formerly subject.

(*t*) L. P. Act, s. 44 (1), above, p. 134.

CHAPTER XIII.

RENTCHARGES.

Remedies for the recovery of annual sums charged on land.

L. P. Act, s. 121.

SUB-SECTS. (1) to (5) of sect. 121 of the Property Act replace sub-sects. (1) to (5) of sect. 44 (*a*) of the Conveyancing Act, 1881.

Sub-sect. (6) of sect. 121 replaces sub-sect. (1) of sect. 6 (*a*) of the Conveyancing Act, 1911, and sub-sect. (7) of sect. 121 replaces sub-sect. (6) of sect. 44 of the Act of 1881, as amended by sub-sect. (2) of sect. 6 of the Act of 1911.

Changes effected by s. 121.

The only change in the law effected by sect. 121 is by sub-sect. (4) thereof, which is as follows:—

[C. A. 1881, s. 44 (4).]

[(4) In the like case the person entitled to the annual sum, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust], by all or any of the means hereinafter mentioned [or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by non-payment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed]:

Provided that this subsection shall not authorise the creation of a legal term of years absolute after the commencement of this Act, save where the annual sum is a rentcharge held for a legal estate.

[The surplus, if any, of the money raised, or of the income received, under the trusts of the deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.]

The means by which such annual sum, arrears, costs, and expenses may be raised includes—

(a) the creation of a legal mortgage or a sale (effected by assignment or subdemise) of the term created in the land charged or any part thereof,

(b) the receipt of the income of the land comprised in the term.

(*a*) Repealed. See above, Part I., p. 17.

Rentcharge held for a legal estate.

It will be seen that the proviso is new. A rentcharge held for a legal estate is "a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute" (*b*). Thus, a rentcharge for life only is an "equitable interest."

Equitable rentcharges.

The proviso must be read in conjunction with sub-sect. (2) of sect. 8 of the Act, which is as follows:—

(2) Where a rentcharge is held for a legal estate, the owner thereof may under the statutory power or under any corresponding power, create a legal term of years absolute for securing or compelling payment of the same; but in other cases terms created under any such power shall, unless and until the estate owner of the land charged gives legal effect to the transaction, take effect only as equitable interests.

S. 122.

Sect. 122 of the Property Act is new, and provides as follows:—

Creation of rentcharges charged on another rentcharge and remedies for recovery thereof.

122.—(1) A rentcharge or other annual sum (not being rent incident to a reversion) payable half yearly or otherwise may be granted, reserved, charged or created out of or on another rentcharge or annual sum (not being rent incident to a reversion) charged on or payable out of land or on or out of the income of land, in like manner as the same could have been made to issue out of land.

(2) If at any time the annual sum so created or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum shall (without prejudice to any prior interest or charge) have power to appoint a receiver of the annual sum charged or any part thereof, and the provisions of this Act relating to the appointment, powers, remuneration and duties of a receiver, shall apply in like manner as if such person were a mortgagee entitled to exercise the power of sale conferred by this Act, and the annual sum charged were the mortgaged property and the person entitled thereto were the mortgagor.

(3) The power to appoint a receiver conferred by this section shall (where the annual sum is charged on a rentcharge) take effect in substitution for the remedies conferred, in the case of annual sums charged on land, by the last preceding section, but subsection (6) of that section shall apply and have effect as if herein re-enacted and in terms made applicable to the powers conferred by this section.

(4) This section applies to annual sums expressed to be created before as well as after the commencement of this Act, and, but without prejudice to any order of the court made before the commencement of this Act, operates to confirm any annual sum which would have been validly created if this section had been in force.

(*b*) L. P. Act, s. 1 (2) (b), above, p. 98.

CHAPTER XIV.

POWERS OF ATTORNEY.

SECTS. 123 to 129 (inclusive) of the Property Act form a group of sections dealing with "powers of attorney."

Execution under power of attorney. L. P. Act, s. 123.

Sect. 123 re-enacts sect. 46 (*a*) of the Conveyancing Act, 1881, without amendment, except that the new section is to operate without prejudice to any statutory direction that an instrument is to be executed in the name of an estate owner.

Payment by attorney under power without notice of death, &c. L. P. Act, s. 124.

Sub-sects. (1) and (3) of sect. 124 (*b*) of the Property Act re-enact sub-sects. (1) and (2) of sect. 47 (*a*) of the Conveyancing Act.

Sub-sect. (2) of sect. 124 is new and provides as follows:—

Statutory declaration by attorney. Ib. subs. (2).

(2) A statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was made or done.

Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power.

Where probate or letters of administration have been granted to any person, as attorney for some other person, this section applies as if the payment made or acts done under the grant had been made or done under a power of attorney.

S. 125.

Sect. 125 of the Act is new and provides as follows:—

Powers of attorney relating to land to be filed.

125.—(1) Where an instrument creating a power of attorney confers a power to dispose of or deal with any interest in or charge upon land,

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(*a*) Repealed: see above, Part I., p. 17.

(*b*) This section applies to payments and acts made and done before or after the commencement of the Act, and in this section "power of attorney" includes a power of attorney implied by statute: see L. P. Act, s. 124 (4).

the instrument or a certified copy thereof or of such portions thereof as refer to or are necessary to the interpretation of such power shall be filed at the Central Office pursuant to the statutory enactment in that behalf, unless the instrument only relates to one transaction and is to be handed over on the completion of that transaction:

Provided that, if the instrument relates to land or a charge registered under the Land Registration Act, 1925, the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Land Registry, and it shall not be necessary to file it at the Central Office unless it also relates to land or a charge not so registered, in which case the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Central Office and an office copy shall be filed at the Land Registry.

(2) Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon land (not being land or a charge registered as aforesaid) shall be entitled to have any instrument creating a power of attorney which affects his title, or an office copy thereof or of the material portions thereof delivered to him free of expense.

(3) This section only applies to instruments executed after the commencement of this Act, and no right to rescind a contract shall arise by reason of the enforcement of the provisions of this section.

"The statutory enactment in that behalf" referred to in subsect. (1) of this section is sect. 219 of the Supreme Court of Judicature (Consolidation) Act, 1925, replacing sect. 48 of the Conveyancing Act, 1881 (*c*).

"The statutory enactment in that behalf."

Sect. 126 of the Property Act re-enacts, without amendment, sect. 8 (*d*) of the Conveyancing Act, 1882.

S. 126. Effect of irrevocable power of attorney for value.

Sect. 127 of the Property Act re-enacts, without amendment, sect. 9 (*d*) of the Conveyancing Act, 1882.

S. 127. Effect of powers of attorney irrevocable for a fixed time.

Sect. 128 of the Property Act introduces a new and useful alteration in the law, and, as will be seen, is retrospective as regards powers of attorney created by instruments executed after the 31st December, 1882 (*e*), and before the commencement of the Property Act.

S. 128.

The section is as follows:—

128.—(1) A power of attorney given for valuable consideration may be given, and shall be deemed to have been always capable of being

Devolution of power of

(*c*) Above, Part I., p. 18.
(*d*) Repealed: above, Part I., p. 17.
(*e*) The C. Act, 1882, came into operation immediately after that date: see sect. 1 (2).

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attorney given to a purchaser.

given, to a purchaser of property or any interest therein, and to the persons deriving title under him thereto, and those persons shall be the duly constituted attorneys for all the purposes of the power, but without prejudice to any right to appoint substitutes given by the power.

(2) This section applies to powers of attorney created by instruments executed after the thirty-first day of December, eighteen hundred and eighty-two.

(3) This section does not authorise the persons deriving title under the donee of the power to execute, on behalf of the registered proprietor, an instrument relating to registered land to which effect is to be given on the register, unless the power is protected by a caution or other entry on the register.

S. 129. Power of attorney granted by married woman.

Sect. 129 of the Property Act re-enacts, without amendment, sect. 40 (*f*) of the Conveyancing Act, 1881.

(*f*) Repealed: above, Part I., p. 17.

CHAPTER XV.

MISCELLANEOUS ENACTMENTS.

Section i.—*Introductory.*

The following summary of sections, not previously referred to, of the Property Act may be useful.

Summary of sections not previously dealt with.

Section ii.—Part I. of the Act (sects. 1 to 39).

Part I. of the Act.

(a) *Saving clauses.*

The following sections "save" various rights and interests:—

By sect. 6 nothing in this Part of the Act is to affect prejudicially the right to enforce any lessor's or lessee's covenants, &c. contained in any such instrument as is mentioned in this section, the benefit or burden of which runs with the reversion or the term.

S. 6. Saving of lessor's and lessee's covenants.

Sub-sects. (1) and (2) of sect. 7 have already been referred to (*a*).

S. 7. Saving of certain legal estates and powers.

Sub-sects. (3) and (4) are as follows:—

(3) The provisions of—

(a) the Forfeiture Act, 1870, in regard to the land of a convict; 33 & 34 Vict. c. 23.

(b) the Friendly Societies Act, 1896, in regard to land to which that Act applies; 59 & 60 Vict. c. 25.

(c) any other statutes conferring special facilities or prescribing special modes (whether by way of registered memorial or otherwise) for disposing of or acquiring land, or providing for the vesting (by conveyance or otherwise) of the land in trustees or any person, or the holder for the time being of an office or any corporation sole or aggregate (including the Crown);

shall remain in full force.

(*a*) Above, Part III., Chap. I.

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This subsection does not authorise an entailed interest to take effect otherwise than as an equitable interest.

(4) Where any such power for disposing of or creating a legal estate is exercisable by a person who is not the estate owner, the power shall, when practicable, be exercised in the name and on behalf of the estate owner.

S. 8. Saving of certain legal powers to lease.

Sub-sect. (1) of sect. 8 (*b*) deals with leases or tenancies at a rent authorised to be granted by a mortgagor or mortgagee, or by the Settled Land Act, or any other statute.

S. 12. Limitation and Prescription Acts.

By sect. 12 nothing in this Part of the Act is to affect the operation of any statute or of the general law for the limitation of actions or proceedings relating to land or with reference to the acquisition of easements over or in respect of land.

S. 13. Effect of possession of documents.

By sect. 13 the Act is not prejudicially to affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land, nor affect any question arising out of or consequent upon any omission to obtain or any other absence of possession by any person of any documents relating to a legal estate in land.

S. 14. Interests of persons in possession.

By sect. 14 this Part of the Act is not prejudicially to affect the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation.

(b) *Effect of certain orders, &c.*

S. 9. Vesting orders and dispositions of legal estates.

Sect. 9 provides that certain vesting orders, vesting declarations (express or implied), vesting instruments and conveyances affecting a legal estate are to operate as conveyances by the estate owner of the legal estate affected, and applies the provisions of the Trustee Act, relating to vesting orders and orders appointing a person to convey, to vesting orders authorised by this Part of the Act.

(c) *As to parties.*

S. 15.

Sect. 15 of the Act provides as follows:—

Presumption that parties are of full age.

15. The persons expressed to be parties to any conveyance shall, until the contrary is proved, be presumed to be of full age at the date thereof.

(*b*) For sub-sect. (2), see above, Part III., Chap. XIII.

(d) *Death duties.*

Ss. 16 to 18. Death duties.

The provisions of sects. 16 to 18 of the Act, relating to death duties, are considered hereafter in connection with Chapter XXI. of the Treatise, which Chapter treats "Of the Death Duties" (*c*).

(e) *Married infants.*

S. 21.

Sect. 21 of the Act is as follows:—

Receipts by married infants.

21. A married infant shall have power to give valid receipts for all income (including statutory accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

(f) *Lunatics and defectives* (*d*).

S. 22.

Sect. 22 of the Act is as follows:—

Conveyances on behalf of lunatics and defectives and as to land held by them on trust for sale.

22.—(1) Where a legal estate in land (whether settled or not) is vested in a lunatic, or a defective, either solely or jointly with any other person or persons, his committee or receiver shall, under an order in lunacy or of the court, or under any statutory power, make or concur in making all requisite dispositions for conveying or creating a legal estate in the name and on behalf of the lunatic or defective.

(2) If land held on trust for sale is vested in a lunatic, or a defective, either solely or jointly with any other person or persons, a new trustee shall be appointed in his place, or he shall be otherwise discharged from the trust, before the legal estate is dealt with under the trust for sale or under the powers vested in the trustees for sale (*e*).

Section iii.—Part II. of the Act (sects. 40 to 84).

(a) *Contracts* (*sects.* 40 *to* 50).

S. 40.

Contract for sale, &c. of land to be in writing.

Sect. 40 replaces sect. 4 of the Statute of Frauds so far as the latter section relates to "any contract or sale of lands, tenements or hereditaments or any interest in or concerning them" (*f*).

S. 41.

Stipulations not of the essence of a contract.

Sect. 41 replaces sect. 25 (7) of the Judicature Act, 1873 (*g*).

(*c*) Below, Part IX., Section XXI.

(*d*) For the definitions of these expressions, see Table of Definitions, above, Part I., Chap. VII.

(*e*) See also L. P. Act, s. 171, giving power to the Court to settle the beneficial interests of lunatics or defectives.

(*f*) See below, Part IX., Section I.

(*g*) See below, Part IX., Section III.

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S. 49. Applications to the Court by vendor and purchaser.

Sub-sects. (1) and (3) of sect. 49 replace, and extend to exchanges, sect. 9 of the Vendor and Purchaser Act, 1874 (*h*). Sub-sect. (2) introduces an important change in the law as to the power of the Court to order the return of a deposit (*h*).

S. 50. Discharge of incumbrances by the Court on sales or exchanges.

Sect. 50 replaces, and extends to exchanges, and slightly modifies, sect. 5 (*i*) of the Conveyancing Act, 1881, as amended by sect. 1 (*i*) of the Conveyancing Act, 1911.

(b) *Conveyances and other instruments (sects. 51 to 75).*

S. 51.

Sect. 51 of the Act is as follows:—

Lands lie in grant only. [R. P. Act, 1845, s. 2 (*j*).]

51.—(1) [All lands and all interests therein lie in grant] and are incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale; and a conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.

[C. A. 1881, s. 49 (1) (*i*).]

(2) [The use of the word grant is not necessary to convey land] or to create any interest therein.

S. 52.

Sect. 52 of the Act is as follows:—

Conveyances to be by deed. [Compare R. P. Act, 1845, s. 3 (*k*).]

52.—(1) [All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.]

(2) This section does not apply to—

(a) assents by a personal representative;

(b) disclaimers made in accordance with section fifty-four of the Bankruptcy Act, 1914, or not required to be evidenced in writing;

(c) surrenders by operation of law, including surrenders which may, by law, be effected without writing;

(d) [leases or tenancies or other assurances not required by law to be made in writing;]

(e) receipts not required by law to be under seal;

(f) vesting orders of the court or other competent authority;

(g) conveyances taking effect by operation of law.

S. 53. Instruments required to be in writing.

S. 54. Creation of interests in land by parol.

Sects. 53 and 54 of the Act reproduce the substance of sects. 1, 2, 3, 7, 8 and 9 (*l*) of the Statute of Frauds.

(*h*) See below, Part IX., Section I.
(*i*) Repealed: see above, Part I., p. 17.
(*j*) Repealed: L. P. Act, s. 207 and Seventh Schedule.
(*k*) Repealed: L. P. Act, s. 207 and Seventh Schedule.
(*l*) All repealed: *ibid.*

Sect. 55 of the Act is as follows:— S. 55.

55. Nothing in the last two foregoing sections shall— Savings in regard to last two sections.

(a) invalidate dispositions by will; or

(b) affect any interest validly created before the commencement of this Act; or

(c) affect the right to acquire an interest in land by virtue of taking possession; or

(d) affect the operation of the law relating to part performance.

Sect. 56 of the Act re-enacts, in substance, but extends to all kinds of property and to "other interests," sect. 5 (*m*) of the Real Property Act, 1845, and is as follows:— S. 56.

56.—(1) [A person may take an immediate] or other interest [in land] or other property, [or the benefit of any condition,] right of entry, [covenant] or agreement over or [respecting land] or other property, [although he may not be named as a party to the] conveyance or other instrument. Persons taking who are not parties and as to indentures.

(2) [A deed] between parties, to effect its objects, [has the effect of an indenture though not indented] or expressed to be an indenture. [R. P. Act, 1845, s. 5.]

Sect. 57 of the Act is new and is as follows:— S. 57.

57. Any deed, whether or not being an indenture, may be described (at the commencement thereof or otherwise) as a deed simply, or as a conveyance, deed of exchange, vesting deed, trust instrument, settlement, mortgage, charge, transfer of mortgage, appointment, lease or otherwise according to the nature of the transaction intended to be effected. Description of deeds.

The application, in practice, of this section is illustrated by the forms of instruments in the Third, Fourth and Fifth Schedules to the Property Act, and in the First Schedule to the Settled Land Act.

Sect. 58 of the Act re-enacts, with considerable modifications, sect. 53 (*n*) of the Conveyancing Act, 1881, and extends that section, which applied to deeds only, to "instruments" generally. S. 58.

The section is as follows:—

58. [Any] instrument [(whether executed before or after the commencement of this Act) expressed to be supplemental to a previous] instrument, [shall, as far as may be, be read and have effect as if the Provisions as to supplemental instruments. [C. A. 1881, S. 53.]

(*m*) Repealed: L. P. Act, s. 207 and Seventh Schedule.
(*n*) Repealed: see above, Part I., p. 17.

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supplemental instrument contained a full recital of the previous instrument,] but this section does not operate to give any right to an abstract or production of any such previous instrument, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

S. 59. Conditions and certain covenants not implied.

Sect. 59 of the Act re-enacts and extends to "conveyances" generally, sect. 4 (*n*) of the Real Property Act, 1845 (*o*).

S. 62. General words implied in conveyances.

Sect. 62 of the Act re-enacts sect. 6 (*p*) of the Conveyancing Act, 1881, without any variation, except that for the purposes of sub-sect. (3) of the new section the right to compensation for manorial incidents on the extinguishment thereof (*q*) shall be deemed to be a right appertaining to the manor.

S. 63. All estate clause implied.

Sect. 63 of the Act re-enacts sect. 63 (*r*) of the Conveyancing Act, 1881.

S. 64. Production and safe custody of documents.

Sect. 64 of the Act re-enacts sect. 9 (*r*) of the Conveyancing Act, 1881.

S. 65. Reservation of legal estates.

Sect. 65 of the Act is new and provides as follows:—

65.—(1) A reservation of a legal estate shall operate at law without any execution of the conveyance by the grantee of the legal estate out of which the reservation is made, or any regrant by him, so as to create the legal estate reserved, and so as to vest the same in possession in the person (whether being the grantor or not) for whose benefit the reservation is made.

(2) A conveyance of a legal estate expressed to be made subject to another legal estate not in existence immediately before the date of the conveyance, shall operate as a reservation, unless a contrary intention appears.

(3) This section applies only to reservations made after the commencement of this Act.

Under the old law a reservation out of an estate operated, strictly, as a re-grant by the grantee out of the estate granted,

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(*n*) Repealed: L. P. Act, s. 207 and Seventh Schedule.
(*o*) For sects. 60 and 61 of the L. P. Act, see above, Part III., Chap. I.
(*p*) Repealed: see above, Part I., p. 17.
(*q*) See above, Part II., Chap. III.
(*r*) Repealed: see above, Part I., p. 17.

and could not take effect at law unless the grant were executed by the grantee (*s*); but, in equity, it could operate without such execution (*t*).

"Legal estate."

It will be noticed that the section only applies to the reservation of a "legal estate." That expression includes "an easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute" (*u*).

S. 66.

Sect. 66 of the Act is also new, and provides a new mode of confirming past transactions.

The section is as follows:—

Confirmation of past transactions.

66.—(1) A deed containing a declaration by the estate owner that his estate shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his estate and capable under this Act of subsisting as legal estates which, at some prior date, were expressed to have been transferred or created, and any dealings therewith which would have been legal if those interests had been legally and validly transferred or created, shall, to the extent of the estate of the estate owner, but without prejudice to the restrictions imposed by this Act in the case of mortgages, operate to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings aforesaid.

(2) The powers conferred by this section may be exercised by a tenant for life or statutory owner, trustee for sale or a personal representative (being in each case an estate owner) as well as by an absolute owner, but if exercised by any person, other than an absolute owner, only with the leave of the court.

(3) This section applies only to deeds containing such a declaration as aforesaid if executed after the commencement of this Act.

Ss. 67 to 69 and 75.

Sects. 67 ("Receipt in deed sufficient"), 68 ("Receipt in deed or indorsed evidence"), 69 ("Receipt in deed or indorsed authority for payment to solicitor"), and 75 ("Rights of purchaser as to execution") of the Act re-enact respectively sects. 54, 55, 56, and 8 (*v*) of the Conveyancing Act, 1881.

Ss. 70, 71.

Sects. 70 ("Partial release of security from rentcharge") and 71 ("Release of part of land affected from a judgment")

(*s*) *Wickham* v. *Hawker*, 7 M. & W. 63.
(*t*) *May* v. *Belleville*, (1905) 2 Ch. 605.
(*u*) L. P. Act, s. 1 (2) (a), above, Part III., Chap. I.
(*v*) All repealed: see above, Part I., p. 17.

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of the Act re-enact respectively sects. 10 and 11 (*w*) of the Law of Property Amendment Act, 1859.

"Judgment."

In sect. 71 "judgment" expressly includes "any writ or order imposing a charge."

S. 72.

Sub-sects. (3) and (4) of the following section of the Act are new:—

Conveyances by a person to himself, &c.

[L. P. Am. Act, 1859, s. 21 (*x*).]

[C. A. 1881, s. 50 (*y*).]

72.—(1) [In conveyances made after the twelfth day of August, eighteen hundred and fifty-nine, personal property, including chattels real, may be conveyed by a person] to himself jointly with another person [by the like means by which it might be conveyed by him to another person.]

(2) [In conveyances made after the thirty-first day of December, eighteen hundred and eighty-one, freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.]

(3) After the commencement of this Act a person may convey land to or vest land in himself.

(4) Two or more persons (whether or not being trustees or personal representatives) may convey, and shall be deemed always to have been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party; provided that if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

Subs. (1). "Jointly."

The words "to himself jointly with another person" in sub-sect. (1) replace the words "directly to himself and another person or other persons or corporation" in the repealed section, under which the conveyance might have been to himself and another person, &c., as tenants in common. Under the Property Act there can be no effectual conveyance to two or more persons as tenants in common (*z*).

Subs. (3). Conveyance to oneself.

It seems that under sub-sect. (3) a tenant in tail (with the consent of the protector, if any, of the settlement) could dis-

(*w*) Repealed: L. P. Act, s. 207 and Seventh Schedule.
(*x*) Repealed: *ibid.*
(*y*) Repealed: see above, Part I., p. 17.
(*z*) See L. P. Act, s. 34 (2), above, Part III., Chap. V.

entail by conveying the land to *himself* discharged from the tenancy in tail and all remainders, &c.

Subs. (4) "Fiduciary relationship."

The proviso to sub-sect. (4) would apply to a case where, for example, trustees for sale should purport to sell and convey to one of themselves (*a*).

S. 73.

Sect. 73 of the Act is new and provides as follows:—

Execution of deeds by an individual.

73.—(1) Where an individual executes a deed, he shall either sign or place his mark upon the same and sealing alone shall not be deemed sufficient.

(2) This section applies only to deeds executed after the commencement of this Act.

Signing not necessary at common law.

Prior to this Act signing was not necessary to make a deed valid as such at common law (*b*), though signing might be necessary for the due execution of a power required to be executed under hand and seal (*b*).

Usual practice.

It has, of course, been the constant practice for a long time past to execute a deed by signing as well as sealing it.

S. 74. Execution of instruments by or on behalf of corporations.

Sect. 74 of the Act is set out in the section of this book which deals with Chapter III. of the Treatise (*c*).

(c) *Covenants.*

Ss. 76, 77.

Sects. 76 ("Covenants for title") and 77 ("Implied covenants in conveyances subject to rents") are considered hereafter (*d*) in connection with Chapter XIX. of the Treatise, which treats "Of the Remedies for the Breach of the Contract."

Ss. 78, 79.

Sects. 78 and 79 of the Property Act, which deal respectively with the "benefit" and "burden" of covenants "relating to land," are new.

S. 78.

Sect. 78 is as follows:—

Benefit of covenants relating to land.

78.—(1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title

(*a*) See Treatise, Vol. II., pp. 955 *et seq.*
(*b*) See Norton on Deeds, p. 5.
(*c*) Below, Part IX., Section III.
(*d*) Below, Part IX., Section XIX.

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and the persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed.

For the purposes of this subsection in connexion with covenants restrictive of the user of land "successors in title" shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

(2) This section applies to covenants made after the commencement of this Act, but the repeal of section fifty-eight of the Conveyancing Act, 1881, does not affect the operation of covenants to which that section applied.

44 & 45 Vict. c. 41.

Subs. (1). Effect of.

It will be noticed that sub-sect. (1) merely provides, in effect, that a covenant by A. with B., if it "relates to" any land of B., is to be deemed to be made with, and is to have effect as if expressly made with, B. and his successors in title and the persons deriving title under him or them, and that, if the covenant be restrictive of the user of A.'s land, "successors in title" is to be deemed to include the owners and occupiers for the time being of the land of B. intended to be benefited.

The sub-section does not alter the law as to what are covenants "relating to land," nor as to what would be the effect of a covenant *expressly* made with the persons with whom, under the sub-section, it is to be *deemed* to be made.

Subs. (2). Saving of C. A. 1881, s. 58.

Sect. 58 (*e*) of the Conveyancing Act, 1881, applied only to covenants made after the commencement (*f*) of that Act (*g*), and provided, by sub-sect. (1), that a covenant relating to land of inheritance, or devolving on the heir as special occupant, should be deemed to be made with the covenantee, his heirs and assigns, and should have effect as if heirs and assigns were expressed; and, by sub-sect. (2), that a covenant relating to land not of inheritance, or not devolving on the heir as special occupant, should be deemed to be made with the covenantee, his executors, administrators, and assigns, and should have effect as if executors, administrators, and assigns were expressed.

That section did not, nor does sect. 78 of the Property Act, make a covenant run with the land, where it would not so run,

(*e*) Repealed: see above, Part I., p. 17.
(*f*) Namely, from and immediately after the 31st December, 1881: see C. Act, 1881, s. 1 (2).
(*g*) C. Act, 1881, s. 58 (3).

if it had been expressed in the terms in which, under those sections respectively, it is to be deemed to be expressed.

"Heirs."

As "heirship" is abolished by the Administration Act (*h*), the use of the word "heirs" would obviously be inappropriate in a covenant entered into after the commencement of the Property Act.

Sect. 79 of the Act is as follows:—

S. 79. Burden of covenants relating to land.

79.—(1) A covenant relating to any land of a covenantor or capable of being bound by him, shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself, his successors in title and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed.

This subsection extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

(2) For the purposes of this section in connexion with covenants restrictive of the user of land "successors in title" shall be deemed to include the owners and occupiers for the time being of such land.

(3) This section applies only to covenants made after the commencement of this Act.

Effect of section.

Here again the section does not alter the law as to what covenants "relate to land," or as to the burden of what covenants, if expressed in the terms in which by the section they are to be deemed to be expressed, "run with the land" (*i*) of the covenantor.

Things not *in esse*.

The second paragraph of sub-sect. (1) appears to be intended to meet the rule that a covenant in a lease by a lessee concerning a thing not *in esse* at the time of the demise, *e.g.*, to build a house on the land demised, does not bind assigns, unless they are named (*k*).

S. 80.

Sub-sect. (1) of sect. 80 of the Property Act re-enacts, in substance, sect. 59 (*l*) of the Conveyancing Act, 1881. Sub-sects. (2), (3) and (4) are new.

(*h*) Below, Part VII.

(*i*) For the law as to what covenants run with the land, see Goodeve's Law of Real Property, pp. 169 *et seq.*, 5th ed.; *Spencer's Case*, 1 Sm. L. C., Vol. I., p. 62, 12th ed.

(*k*) See *Doughty* v. *Bowman*, 4 Q. B. 444; *Spencer's Case, ubi sup.*

(*l*) Repealed: see above, Part I., p. 17.

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Sect. 80 is as follows:—

Covenants binding land. [C. A. 1881, s. 59.]

80.—(1) [A covenant and a bond and an obligation or contract under seal made after the thirty-first day of December, eighteen hundred and eighty-one, binds the real estate as well as the personal estate of the person making the same if and so far as a contrary intention is not expressed in the covenant, bond, obligation, or contract.

This subsection extends to a covenant implied by virtue of this Act.]

(2) Every covenant running with the land, whether entered into before or after the commencement of this Act, shall take effect in accordance with any statutory enactment affecting the devolution of the land, and accordingly the benefit or burden of every such covenant shall vest in or bind the persons who by virtue of any such enactment or otherwise succeed to the title of the covenantee or the covenantor, as the case may be.

(3) The benefit of a covenant relating to land entered into after the commencement of this Act may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of this Act.

(4) For the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

Subs. (2) Devolution of land.

Sub-sect. (2) is rendered necessary owing to the alteration of the law as to the devolution of land on intestacy, effected by the Administration Act (*m*).

Semble, law not altered.

It is thought that sub-sects. (2) and (4) are not intended to alter the law as to the cases in which (a) the benefit, and (b) the burden of a covenant, will run with the land; *e.g.*, the rule that the burden of a covenant entered into by the owner in fee of one piece of land with the owner in fee of another piece of land, relating to the land of the covenantor, does not run *at law* with the land so as to bind the assigns of the covenantor; but that, where the covenant is a *restrictive* covenant, *e.g.*, not to build on the land, and does not require the expenditure of money in order to its performance, an assign of the purchaser, taking the legal estate *with notice*, or taking an equitable estate only, whether with or without notice, will be restrained in equity from breaking the covenant (*n*).

(*m*) Below, Part VII.

(*n*) See Goodeve's Law of Real Property, p. 170, n. (*y*), 5th ed.; Treatise, Chap. X., § 12, pp. 467 *et seq.*

Sect. 82 of the Property Act is new, and, without prejudice to any order of the Court made before the commencement of the Act, is retrospective.

S. 82.

The section is as follows:—

Covenants and agreements entered into by a person with himself and another or others.

82.—(1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

(2) This section applies to covenants or agreements entered into before or after the commencement of this Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons, but without prejudice to any order of the court made before such commencement.

Before the Act it was held that a covenant entered into by a person with himself and one or more other persons was void (*o*).

S. 84. Power to discharge or modify restrictive covenants affecting land.

Sect. 84 of the Act is new and contains somewhat elaborate provisions empowering the authority therein defined, in the circumstances and subject to the conditions therein mentioned (but without prejudice to any concurrent jurisdiction of the Court), by order wholly or partially to discharge or modify, except in the cases therein mentioned, any restriction arising under a covenant or otherwise as to the user of any freehold land or of any leasehold land held for a term of more than seventy years, of which at least fifty years have expired, or the building thereon, and also authorises certain applications to the Court in reference to such restrictions. The section also authorises the making of rules in relation to applications to the authority under this section and as to appeals to the Court from any order of the authority (*p*).

(*o*) See *Ellis* v. *Kerr*, (1910) 1 Ch. 529; *Napier* v. *Williams*, (1911) 1 Ch. 361.

(*p*) See Law of Property (Restrictive Covenants Discharge and Modification) Rules, 1925; S. R. & O. 1925, No. 1182/L. 36, dated November 19th, 1925; (1925) W. N. Part II., p. 439; and (as to appeals from the Authority) Rule 8 of the Rules of the Supreme Court (Law of Property and other Acts), 1925; S. R. & O. 1925, No. 935/L. 22, dated September 22nd, 1925; (1925) W. N., Part II., p. 332.

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Section iv.—Part V. of the Act (sects. 139 to 154).

Leases and Tenancies.

(a) *Generally.*

Application of Part V. to existing leases.

Part V. of the Property Act, except where otherwise expressly provided, applies to leases created before or after the commencement of the Act, and "lease" includes an underlease or other tenancy (*q*).

(b) *Repeals and Re-enactments.*

The sections of the Property Act specified in the first column of the subjoined Table, and dealing with the several subject-matters specified opposite such sections respectively in the second column of the Table, re-enact, *with or without amendment,* the several enactments specified opposite such sections respectively in the third column of the Table. All the last-mentioned enactments are repealed by the Property Act (*r*).

L. P. Act.	Subject Matter.	Repealed Enactments.
S. 139	Effect of extinguishment of reversion.	R. P. Act, 1845, s. 9.
S. 140*	Apportionment of conditions on severance.	C. A. 1881, s. 12.
S. 141*	Rent and benefit of lessee's covenants to run with the reversion.	C. A. 1881, s. 10; C. A. 1911, s. 2.
S. 142*	Obligations of lessor's covenants to run with reversion.	C. A. 1881, s. 11.
S. 143*	Effect of licences granted to lessees.	L. P. Am. Act, 1859, s. 1.
S. 144	No fine to be exacted for licence to assign.	C. A. 1892, s. 3.
S. 145	Lessee to give notice of ejectment to lessor.	C. L. P. Act, 1852, s. 209.
S. 146*	Restrictions on and relief against forfeiture of leases and under-leases.	C. A. 1881, s. 14; C. A. 1892, ss. 2, 4, 5.
S. 148	Waiver of a covenant in a lease.	L. P. Am. Act, 1860, s. 6.
S. 150*	Surrender of a lease without prejudice to under-leases, with a view to the grant of a new lease.	Landlord and Tenant Act, 1730, s. 6.
S. 151*	Provision as to attornments by tenants.	4 & 5 Anne, c. 3; 11 Geo. 2, c. 19, s. 11.
S. 152	Leases invalidated by reason of non-compliance with terms of powers under which they are granted.	The Leases Acts, 1849 and 1850.
S. 153*	Enlargement of residue of long terms into fee simple estates.	C. A. 1881, s. 65; C. A. 1882, s. 11.

* The asterisk denotes that the section amends, to a greater or less extent, the relative repealed enactment or enactments.

(*q*) L. P. Act, s. 154.
(*r*) L. P. Act, s. 207 and Seventh Schedule.

(c) *Amendments of Repealed Enactments.*

Space admits of reference only to the more important of the amendments made by certain of the sections of the Property Act which are included in the above Table.

S. 140. Apportionment of conditions on severance.

Sub-sect. (2) of sect. 140 is new and provides as follows:—

Subs. (2). Counter notice.

(2) In this section "right of re-entry" includes a right to determine the lease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice.

S. 146. Restrictions on and relief against forfeiture of leases and underleases.

Subs. (4). Non-payment of rent.

Sub-sect. (4) of sect. 146 re-enacts sect. 4 ("Power of Court to protect underlessees on forfeiture of superior leases") of the Conveyancing Act, 1892, but extends the provisions of the latter section to the case where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture *for non-payment of rent*. With this exception, sect. 146 does not affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent (*s*).

Subs. (8) (i). Covenant against assigning, &c.

Sect. 14 of the Conveyancing Act, 1881, did not extend to a covenant or condition against the assigning, underletting, parting with the possession, or disposing of the land leased (*t*). By sub-sect. (8) (i) of sect. 146 of the Property Act, this exception applies only *where the breach occurred before the commencement of that Act.*

S. 153. Enlargement of residue of long terms into fee simple estates.

Subs. (3). Extension to mortgage terms.

Subss. (4) & (5). What rents barred, and when.

The following sub-sects. of sect. 153 of the Act are new:—

(3) This section extends to mortgage terms, where the right of redemption is barred.

(4) A rent not exceeding the yearly sum of one pound which has not been collected or paid for a continuous period of twenty years or upwards shall, for the purposes of this section, be deemed to have ceased to be payable:

Provided that, of the said period, at least five years must have elapsed after the commencement of this Act.

(5) Where a rent incident to a reversion expectant on a term to which this section applies is deemed to have ceased to be payable for

(*s*) L. P. Act, s. 146 (11), replacing C. Act, 1881, s. 14 (8).
(*t*) C. Act, 1881, s. 14 (6) (i).

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the purposes aforesaid, no claim for such rent or for any arrears thereof shall be capable of being enforced.

Subs. (6) (i). Married women.

In sub-sect. (6) (i) of sect. 153 the words "and, in the case of a married woman without the concurrence of her husband, whether or not she is entitled for her separate use or as her separate property, or is subject to a restraint on anticipation," take the place of the words "but, in case of a married woman, with the concurrence of her husband, unless she is entitled for her separate use, whether with restraint on anticipation or not, and then without his concurrence" in sub-sect. (2) (i) of sect. 65 of the Conveyancing Act, 1881.

Subs. (9). Subsidiary vesting deed (*u*).

The following sub-section of sect. 153 of the Property Act takes the place of sub-sect. (5) of sect. 65 of the Conveyancing Act, 1881:—

(9) But where—

(a) any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land, or, in the case of settlements coming into operation before the commencement of this Act, so as to go along with that other land as far as the law permits; and

(b) at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, free from charges or powers of charging created by a settlement;

the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed by means of a subsidiary vesting instrument and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

(d) *New Enactment* (*x*).

S. 147.

Sect. 147 of the Act introduces new protection for lessees called upon to effect "decorative repairs," and is as follows:—

Relief against notice to effect decorative repairs.

147.—(1) After a notice is served on a lessee relating to the internal decorative repairs to a house or other building, he may apply to the court for relief, and if, having regard to all the circumstances of

(*u*) See S. L. Act, s. 10, below, Part IV.

(*x*) For sect. 149 (also new), see above, Part II., Chap. IV., p. 95, and Part III., Chap. I., p. 102.

the case (including in particular the length of the lessee's term or interest remaining unexpired), the court is satisfied that the notice is unreasonable, it may, by order, wholly or partially relieve the lessee from liability for such repairs.

(2) This section does not apply—

(i) where the liability arises under an express covenant or agreement to put the property in a decorative state of repair and the covenant or agreement has never been performed;

(ii) to any matter necessary or proper—

(a) for putting or keeping the property in a sanitary condition, or

(b) for the maintenance or preservation of the structure;

(iii) to any statutory liability to keep a house in all respects reasonably fit for human habitation;

(iv) to any covenant or stipulation to yield up the house or other building in a specified state of repair at the end of the term.

(3) In this section "lease" includes an underlease and an agreement for a lease, and "lessee" has a corresponding meaning and includes any person liable to effect the repairs.

(4) This section applies whether the notice is served before or after the commencement of this Act, and has effect notwithstanding any stipulation to the contrary.

Section v.—Part VI. of the Act (sects. 155 to 160).

Powers.

(a) *Introductory.*

Application of Part VI.

This Part of the Act applies to powers created or arising either before or after the commencement of the Act (*y*).

(b) *Repeals and Re-enactments.*

Ss. 155 and 156.

Sects. 155 ("Release of powers simply collateral") and 156 ("Disclaimer of powers") re-enact respectively sect. 52 (*z*) of the Conveyancing Act, 1881, and sect. 6 (*z*) of the Conveyancing Act, 1882.

S. 158.

Sect. 158 ("Validation of appointments where objects are excluded or take illusory shares") re-enacts the provisions of the Appointments Act, 1830 (*a*), and the Powers of Appointment Act, 1874 (*a*).

(*y*) L. P. Act, s. 160.
(*z*) Repealed: see above, p. 17.
(*a*) Repealed: L. P. Act, s. 207 and Seventh Schedule.

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S. 159.

Sect. 159 ("Execution of powers not testamentary") re-enacts sect. 12 (*a*) of the Law of Property Act, 1859.

(c) *New Enactment.*

S. 157.

Sect. 157 of the Act is new and is as follows:—

Protection of purchasers claiming under certain void appointments.

157.—(1) An instrument purporting to exercise a power of appointment over property, which, in default of and subject to any appointment, is held in trust for a class or number of persons of whom the appointee is one, shall not (save as hereinafter provided) be void on the ground of fraud on the power as against a purchaser in good faith:

Provided that, if the interest appointed exceeds, in amount or value, the interest in such property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances made in his favour and to any hotchpot provision, the protection afforded by this section to a purchaser shall not extend to such excess.

(2) In this section "a purchaser in good faith" means a person dealing with an appointee of the age of not less than twenty-five years for valuable consideration in money or money's worth, and without notice of the fraud, or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.

(3) Persons deriving title under any purchaser entitled to the benefit of this section shall be entitled to the like benefit.

(4) This section applies only to dealings effected after the commencement of this Act.

Subs. (1). "Excess."

It will be seen that sub-sect. (1) does not invalidate a purchase, so far as it comprises an interest in excess of the presumptive share in default of appointment, but, as regards such excess, deprives the purchaser of the protection of this section.

Section vi.—Part VII. of the Act (sects. 161 to 166).

Perpetuities and Accumulations.

(a) *Perpetuities.*

Ss. 161 and 163.

Sects. 161 ("Abolition of the double possibility rule") and 163 ("Validation of certain gifts void for remoteness") are new, and are considered hereafter in connection with

(*a*) Repealed: L. P. Act, s. 207 and Seventh Schedule.

Chapter IX. of the Treatise, which treats "Of Title under the Exercise of Powers" (*b*).

S. 162. Restrictions on the perpetuity rule.

By sect. 162 (*c*), "for removing doubts," it is declared that the rule of law relating to perpetuities does not apply and shall be deemed never to have applied to any such power, rentcharge, grant, exception, or reservation as is therein mentioned.

(b) *Accumulations.*

S. 164. General restrictions on accumulation of income.

Sect. 164 re-enacts, substantially without modification (*d*), sects. 1, 2 and 4 of the Accumulations Act, 1800 (*e*), commonly known as "the Thellusson Act."

Sect. 165 is as follows:—

S. 165. Qualification of restrictions on accumulation.

165. Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of this Act) to be taken into account in determining the periods for which accumulations are permitted to be made by the last preceding section, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.

This section is new and gives statutory effect to what has long been suggested as the true construction of the Thellusson Act, namely, that it did not operate to exclude a further period of accumulation, where such accumulation was incident to the circumstance of the beneficiary being an infant (*f*).

S. 166. Restriction on accumulation for the purchase of land. [Accumulations Act, 1892, (*e*).]

Sect. 166 provides as follows:—

166.—(1) [No person may settle or dispose of any property in such manner that the income thereof shall be wholly or partially accumulated for the purchase of land only, for any longer period than the duration of the minority or respective minorities of any person or

(*b*) Below, Part IX., Section IX.

(*c*) This section applies to instruments coming into operation before or after the commencement of the Act: see sub-sect. (2).

(*d*) Except that the saving of any provision for raising portions is extended to portions for any child, children "or remoter issue" of any grantor, settlor or testator, instead of being confined to portions for a child or children.

(*e*) Repealed: L. P. Act, s. 207 and Seventh Schedule.

(*f*) See *Griffiths* v. *Vere*, 9 Ves. 127, at p. 136; *Mathews* v. *Keble*, L. R. 3 Ch. 691, at p. 696.

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persons who, under the limitations of the instrument directing the accumulation, would for the time being, if of full age, be entitled to the income so directed to be accumulated.]

(2) This section does not, nor do the enactments which it replaces, apply to accumulations to be held as capital money for the purposes of the Settled Land Act, 1925, or the enactments replaced by that Act, whether or not the accumulations are primarily liable to be laid out in the purchase of land.

[(3) This section applies to settlements and dispositions made after the twenty-seventh day of June eighteen hundred and ninety-two.]

Subs. (2). Capital money.

Sub-sect. (2) of this section confirms the decision in *In re Danson* (1895), W. N. 102, that a direction in a will that during twenty-one years from the testator's death rents of leaseholds should be capitalised and become capital moneys of the settlement of freeholds settled by the will did not fall within the Accumulations Act, 1892, and was therefore valid.

Section vii.—Part VIII. of the Act (sects. 167 to 171).

Married Women and Lunatics.

(a) *Married Women.*

Ss. 167 and 170.

Sects. 167 ("Abolition of acknowledgments by married women") and 170 ("Acquisitions and dispositions of trust estates by married women") are considered hereafter in connection with Chapter XVI. of the Treatise, which treats "Of Personal Incapacity" (*g*).

S. 168.

Sect. 168 is as follows:—

Disclaimer by married woman. [R. P. Act, 1845, s. 7.]

168.—(1) [A married woman has power by deed to disclaim any estate or interest in land] with or without the concurrence of her husband as the case may require.

(2) A husband is not a necessary party to any disclaimer by his wife where—

(a) the wife, if there were no disclaimer, would have been entitled to the property for her separate use or as her separate property; or

(b) the property consists of a trust estate.

Sect. 7 (*h*) of the Real Property Act, 1845, required a disclaimer by a married woman to be made conformably to the

(*g*) Below, Part IX., Section XVI.
(*h*) Repealed: L. P. Act, s. 207 and Seventh Schedule.

provisions of the Fines and Recoveries Act, 1833, that is, by deed acknowledged by her in which her husband concurred (*i*).

Subs. (2). When husband must concur.

From sub-sect. (2) it follows that, as was the law before the commencement of the Property Act, the concurrence of the husband can be necessary only where the married woman was married to him before the commencement of the Married Women's Property Act, 1882 (*k*), and only in respect of an estate or interest in land (not settled or given for her separate use) her title to which first accrued before such commencement (*l*).

"Trust estate."

In the same sub-section "trust estate" means property to which, but for the disclaimer, the married woman would have been entitled as a trustee, either alone or jointly with another trustee or other trustees.

S. 169. Power for Court to bind interest of married woman.

Sect. 169 of the Act re-enacts sect. 7 (*m*) of the Conveyancing Act, 1911.

(*b*) *Lunatics* (*n*).

S. 171. Power for Court to settle the beneficial interests of a lunatic or defective.

Sect. 171 of the Act, by sub-sect. (1), empowers the Court (*o*) to direct a settlement to be made of the property of a lunatic or defective, or any part thereof or any interest therein, on such trusts and subject to such powers and provisions as the Court may deem expedient, and in particular to give such directions in the several cases (a), (b) and (c) mentioned in this sub-section.

Subs. (2). Mode of effecting settlement.

By sub-sect. (2) the Court may direct the committee or receiver of the lunatic or defective, or any trustee for him, to execute and do any instrument (including a disentailing assurance), act, or thing required for giving effect to the settlement, and, for that purpose, may make a vesting order or appoint a person to convey, and any settlement approved by the Court

(*i*) See Fines and Recoveries Act, 1833, s. 77.
(*k*) The 1st January, 1883: see M. W. P. Act, 1882, s. 25.
(*l*) See M. W. P. Act, 1882, s. 5.
(*m*) Repealed: see above, p. 17.
(*n*) For the definitions of "lunatic," "defective" and "committee," see Table of Definitions, above, Part I., Chap. VII.
(*o*) For the purposes of this section, "the Court" means the Judge in Lunacy, or, in such cases as may be prescribed by rules of Court, the High Court: see sub-sect. (8).

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Settlement to be binding.

shall be as effectual and binding as if made by the lunatic or defective while of full capacity.

Subs. (3). Application of section.

By sub-sect. (3) the section is to apply whether or not the lunatic or defective has executed a "testamentary disposition" (*p*) and notwithstanding that it is not known whether he has executed such a disposition or not, but does not apply when he is an infant.

Subs. (4). Who may apply.

Sub-sect. (4) prescribes who may apply to the Court for an order under this section.

Subs. (5). Matters to be regarded in making an order.

Sub-sect. (5) enumerates the matters to which, subject to making due provision for the maintenance of the lunatic or defective, and to providing, by means of a power of appointment or revocation, or otherwise, for the possibility of the lunatic or defective recovering full capacity, the Court may have regard in making an order under this section.

Subs. (7). Power to vary settlement.

Sub-sect. (7) empowers the Court, at any time before the death of the lunatic or defective, to vary the settlement, on being satisfied that any material fact was not disclosed to the Court when the settlement was made, or on account of any substantial change in circumstances.

Subs. (9). Rules.

Sub-sect. (9) authorises the making of rules in lunacy or, as respects cases within the jurisdiction of the High Court, rules of Court, for giving effect to the provisions of this section (*q*).

(*p*) In this section "testamentary disposition" means an instrument executed by the lunatic or defective while of full testamentary capacity, which, if unrevoked, might, on his death, be proved as a will or codicil; and the Court may act on such evidence as to the existence or absence of a testamentary disposition as it thinks fit: see sub-sect. (6).

(*q*) See Rules of the Supreme Court (Law of Property and other Acts), 1925, S. R. & O. 1925, No. 935/L. 22, dated September 22nd, 1925; (1925) W. N. Part II., p. 332. See also the Rules in Lunacy, 1925, S. R. & O. 1925, No. 1024/L. 27, dated October 16th, 1925; W. N., *ibid.*, p. 400.

Section viii.—Part IX. of the Act (sects. 172 to 174).

Voidable Dispositions.

These sections, which re-enact repealed enactments (*r*) and do not alter the law, are considered hereafter, namely, sects. 172 ("Voluntary conveyances to defraud creditors voidable") and 173 ("Voluntary disposition of land how far voidable as against purchasers") in connection with § 4 (Voluntary Conveyances), and sect. 174 ("Acquisitions of reversions at an undervalue") in connection with § 5 (Sale of ground rents, &c.) of Chapter X. of the Treatise, which treats "Of Particular Titles" (*s*).

Section ix.—Part X. of the Act (sects. 175 to 179).

Wills.

Sect. 175 of the Act is new, and materially alters the law as to the destination of the intermediate income in the case of contingent and future testamentary gifts (*t*). S. 175.

The section is as follows:—

175.—(1) A contingent or future specific devise or bequest of property, whether real or personal, and a contingent residuary devise of freehold land, and a specific or residuary devise of freehold land to trustees upon trust for persons whose interests are contingent or executory shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the death of the testator, except so far as such income, or any part thereof, may be otherwise expressly disposed of. Contingent and future testamentary gifts to carry the intermediate income.

(2) This section applies only to wills coming into operation after the commencement of this Act.

Sect. 177 is also new, and provides as follows:— S. 177.

177.—(1) A will expressed to be made in contemplation of a marriage shall, notwithstanding anything in section eighteen of the Wills Act, 1837, or any other statutory provision or rule of law to the Wills in contemplation of marriage. 7 Will. 4 & 1 Vict. c. 26.

(*r*) Namely, the stats. 13 Eliz. c. 5, 27 Eliz. c. 4, the Voluntary Conveyances Act, 1893, and the Sale of Reversions Act, 1867, all repealed by the L. P. Act, s. 207 and Seventh Schedule.

(*s*) Below, Part IX., Section X.

(*t*) As to the previous law, see Theobald on Wills, 7th ed., pp. 180 *et seq.*; *In re Stevens*, (1915) 1 Ch. 429; *In re Eyre*, (1917) 1 Ch. 351; *In re Boulter*, (1918) 2 Ch. 40.

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contrary, not be revoked by the solemnisation of the marriage contemplated.

(2) This section only applies to wills made after the commencement of this Act.

It will be noticed that the will must be *expressed* to be made in contemplation of a *particular* marriage.

S. 178.

Sect. 178 of the Act is new, and provides as follows:—

Power for persons having no issue to dispose of real estate by will.

178. Section three of the Wills Act, 1837, shall (without prejudice to the rights and interests of a personal representative) authorise and be deemed always to have authorised any person to dispose of real property or chattels real by will notwithstanding that by reason of illegitimacy or otherwise he did not leave an heir or next of kin surviving him.

Wills Act, s. 3.

Sect. 3 of the Wills Act empowers "every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir-at-law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator."

Effect of s. 178.

Sect. 178 of the Property Act removes the doubt, raised by the words "and which," &c., quoted above, whether a person who, by reason of illegitimacy or otherwise, did not leave an heir, could dispose by will of real estate, so as to defeat the right of the lord to an escheat (*u*).

S. 179.

Sect. 179 of the Act is as follows:—

Prescribed forms for reference in wills.

179. The Lord Chancellor may from time to time prescribe and publish forms to which a testator may refer in his will, and give directions as to the manner in which they may be referred to, but, unless so referred to, such forms shall not be deemed to be incorporated in a will (*x*).

(*u*) For a decision on a similar clause in a colonial statute, see *Wentworth* v. *Humphrey*, 11 A. C. 619.

(*x*) See Statutory Will Forms, 1925, S. R. & O. 1925, No. 780/L.15, dated August 7th, 1925; (1925) W. N., Part II., p. 298.

Section x.—Part XI. of the Act (sects. 180 to 200.)

Miscellaneous.

Sect. 180 of the Act is as follows:— S. 180.

Provisions as to corporations.

180.—(1) Where either after or before the commencement of this Act any property or any interest therein is or has been vested in a corporation sole (including the Crown), the same shall, unless and until otherwise disposed of by the corporation, pass and devolve to and vest in and be deemed always to have passed and devolved to or vested in the successors from time to time of such corporation.

(2) Where either after or before the commencement of this Act there is or has been a vacancy in the office of a corporation sole or in the office of the head of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation) at the time when, if there had been no vacancy, any interest in or charge on property would have been acquired by the corporation, such interest shall notwithstanding such vacancy vest and be deemed to have vested in the successor to such office on his appointment as a corporation sole, or in the corporation aggregate (as the case may be), but without prejudice to the right of such successor, or of the corporation aggregate after the appointment of its head officer, to disclaim that interest or charge.

(3) Any contract or other transaction expressed or purported to be made with a corporation sole, or any appointment of a corporation sole as a custodian or other trustee or as a personal representative, at a time (either after or before the commencement of this Act) when there was a vacancy in the office, shall on the vacancy being filled take effect and be deemed to have taken effect as if the vacancy had been filled before the contract, transaction or appointment was expressed to be made or was capable of taking effect, and on the appointment of a successor shall be capable of being enforced, accepted, disclaimed or renounced by him.

This section is new and alters the law (*y*).

Sect. 181 of the Act is new and is as follows:— S. 181.

Dissolution of a corporation.

181. Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate.

(*y*) For the previous law, see Norton on Deeds, pp. 199, 202; and as to contracts with a corporation sole, see *Howley* v. *Knight*, 14 Q. B. 290.

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The effect of the dissolution of a corporation is discussed in the Treatise, Vol. II., Chap. XVI., pp. 932 *et seq.*

Bona vacantia.

The effect of the section appears to be that in no case will the property of a dissolved corporation vest in the Crown as *bona vacantia*.

"Legal estate."

It will be noticed that the section only applies to the determination of a *legal estate*. As this section applies to the dissolution of a corporation whether before or after the commencement of the Act, it is thought that, where the dissolution took place before such commencement, the expression "legal estate" will include any legal estate existing before such commencement, whether or not capable, after such commencement, of subsisting as a legal estate.

S. 182. Protection of solicitor and trustees adopting Act.

This section re-enacts sect. 66 (*z*) of the Conveyancing Act, 1881.

S. 183. Fraudulent concealment of documents and falsification of pedigrees.

This section re-enacts the substance of section 24 (*a*) of the Law of Property Amendment Act, 1859, as amended by sect. 8 (*a*) of the Law of Property Amendment Act, 1860.

S. 184. Presumption of survivorship in regard to claims to property.

The following section of the Act is new and alters the law:—

184. In all cases where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

The previous law is stated in the Treatise, Vol. I., Chap. II., p. 143, n. (*h*) ("Death in common calamity").

S. 185. Merger.

Sect. 185 of the Act re-enacts sect. 25 (4) (*b*) of the Judicature Act, 1873.

S. 186. Rights of pre-emption capable of release.

Sect. 186 of the Act is new and is as follows:—

186. All statutory and other rights of pre-emption affecting a legal estate shall be and be deemed always to have been capable of release, and unless released shall remain in force as equitable interests only.

(*z*) Repealed: see above, p. 17.
(*a*) Repealed: L. P. Act, s. 207 and Seventh Schedule.
(*b*) Repealed: L. P. Act, s. 207 and Seventh Schedule.

Under sect. 128 of the Lands Clauses Act, 1845, on the sale by a railway company of superfluous land, a statutory right of pre-emption arises in favour of the owner of the lands from which it was originally severed, and, him failing, in favour of the owners of adjoining lands.

On the conveyance of land to a railway company it has been the usual practice for the vendor expressly to release his right of pre-emption. Under sect. 186 such a release, whether made before or after the commencement of the Act, will bind the releasor and his successors in title to the land to which the right would have attached.

The following section of the Act is new and will, no doubt, be found useful:— S. 188.

188. Where any chattels belong to persons in undivided shares, the persons interested in a moiety or upwards may apply to the court for an order for division of the chattels or any of them, according to a valuation or otherwise, and the court may make such order and give any consequential directions as it thinks fit. Power to direct division of chattels.

The following section is also new:— S. 189.

189.—(1) A power of distress given by way of indemnity against a rent or any part thereof payable in respect of any land, or against the breach of any covenant or condition in relation to land, is not and shall not be deemed ever to have been a bill of sale within the meaning of the Bills of Sale Acts, 1878 and 1882, as amended by any subsequent enactment. Indemnities against rents.

(2) The benefit of all covenants and powers given by way of indemnity against a rent or any part thereof payable in respect of land, or against the breach of any covenant or condition in relation to land, is and shall be deemed always to have been annexed to the land to which the indemnity is intended to relate, and may be enforced by the estate owner for the time being of the whole or any part of that land, notwithstanding that the benefit may not have been expressly apportioned or assigned to him or to any of his predecessors in title.

Sub-sect. (1) overrides the opinion which has been entertained that since the Bills of Sale Acts, 1878 and 1882, powers of distress by way of indemnity against a rent are not available (*c*). Subs. (1). Bills of Sale Acts.

(*c*) See Treatise, Vol. I., Chap. XII., p. 627, n. (*d*).

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Subs. (2). *Benefit* of covenants, &c.

It will be noticed that, under sub-sect. (2), the *benefit* of all covenants and powers given by way of indemnity runs with the land of the covenantee. The sub-section does not expressly provide that the *burden* of the covenants and powers runs with the land of the covenantor; nor, it is thought, does this necessarily follow (*d*). The incidence, however, of the burden of such covenants is, to a considerable extent, covered by the next following section of the Property Act.

S. 190. Equitable apportionment of rents.

Sect. 190 of the Act contains somewhat long and elaborate provisions dealing with cases where there is an "equitable apportionment" of "rents."

"Rent."

"Rent" in the Property Act includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest; and "rentcharge" includes a fee farm rent (*e*).

Meaning of rent in s. 190.

Sect. 190 deals with two kinds of rent only, namely, a rentcharge and rent reserved by a lease.

"Lessor," "lessee," "lease."

In the Property Act "lessor" includes an underlessor and a person deriving title under a lessor or underlessor; "lessee" includes an underlessee and a person deriving title under a lessee or underlessee; and "lease" includes an underlease or other tenancy (*e*).

"Equitable apportionment."

The "equitable" apportionment of a rentcharge or of rent reserved by a lease means an apportionment *without* the consent of the owner of the rentcharge or of the lessor, as the case may be.

"Legal apportionment."

The section has no application (*f*) to the case where the rentcharge or reserved rent has been exclusively charged on part only of the land or "legally" apportioned with the consent of the owner or lessor.

(*d*) See the analogous case of restrictive covenants discussed in the Treatise, Vol. I., Chap. X., § 12, pp. 467 *et seq.*

(*e*) See Table of Definitions, Part I., Chap. VII.

(*f*) See sub-sect. (7).

Equitable apportionment of rents and remedies for non-payment or breach of covenant.

Sect. 190 is as follows (*g*):—

190.—(1) Where in a conveyance for valuable consideration, *other than a mortgage,* of *part* of land which is affected by a rentcharge, such rentcharge or a part thereof is, *without the consent of the owner thereof,* expressed to be—

(a) *charged exclusively* on the land conveyed or any part thereof in exoneration of the land retained or other land; or

(b) *charged exclusively* on the land retained or any part thereof in exoneration of the land conveyed or other land; or

(c) *apportioned* between the land conveyed or any part thereof, and the land retained by the grantor or any part thereof;

then, *without prejudice to the rights of the owner of the rentcharge,* such charge or apportionment shall be binding as between the grantor and the grantee under the conveyance and their respective successors in title.

(2) Where—

(a) any default is made in payment of the whole or part of a rentcharge by the person who, by reason of such charge or apportionment as aforesaid, is liable to pay the same; or

(b) any breach occurs of any of the covenants (other than in the case of an apportionment the covenant to pay the entire rentcharge) or conditions contained in *the deed or other document creating the rentcharge,* so far as the same relate to the land retained or conveyed, as the case may be;

the owner for the time being of any other land affected by the entire rentcharge who—

(i) pays or is required to pay the whole or part of the rentcharge which ought to have been paid by the defaulter aforesaid; or

(ii) incurs any costs, damages or expenses by reason of the breach of covenant or condition aforesaid;

may enter into and distrain on the land in respect of which the default or breach is made or occurs, or any part of that land, and dispose according to law of any distress found, and may also take possession of the income of the same land until, by means of such distress and receipt of income or otherwise the whole or part of the rentcharge (charged or apportioned as aforesaid) so unpaid and all costs, damages and expenses incurred by reason of the non-payment thereof or of the breach of the said covenants and conditions, are fully paid or satisfied.

(3) Where in a conveyance for valuable consideration, *other than a mortgage,* of *part* of land comprised in a lease, *for the residue of the term or interest created by the lease,* the rent reserved by such lease

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(*g*) In the section, as here printed, the *italics* are the writer's. They are not, of course, to be found in the King's Printer's copy of the Act.

or a part thereof is, *without the consent of the lessor,* expressed to be—

(a) *charged exclusively* on the land conveyed or any part thereof in exoneration of the land retained by the assignor or other land; or

(b) *charged exclusively* on the land retained by the assignor or any part thereof in exoneration of the land conveyed or other land; or

(c) *apportioned* between the land conveyed or any part thereof and the land retained by the assignor or any part thereof;

then, *without prejudice to the rights of the lessor,* such charge or apportionment shall be binding as between the assignor and the assignee under the conveyance and their respective successors in title.

(4) Where—

(a) any default is made in payment of the whole or part of a rent by the person who, by reason of such charge or apportionment as aforesaid, is liable to pay the same; or

(b) any breach occurs of any of the lessee's covenants (other than in the case of an apportionment the covenant to pay the entire rent) or conditions contained in *the lease,* so far as the same relate to the land retained or conveyed, as the case may be;

the lessee for the time being of any other land comprised in the lease, in whom, as respects that land, the residue of the term or interest created by the lease is vested, who—

(i) pays or is required to pay the whole or part of the rent which ought to have been paid by the defaulter aforesaid; or

(ii) incurs any costs, damages or expenses by reason of the breach of covenant or condition aforesaid;

may enter into and distrain on the land comprised in the lease in respect of which the default or breach is made or occurs, or any part of that land, and dispose according to law of any distress found, and may also take possession of the income of the same land until (so long as the term or interest created by the lease is subsisting) by means of such distress and receipt of income or otherwise, the whole or part of the rent (charged or apportioned as aforesaid) so unpaid and all costs, damages and expenses incurred by reason of the non-payment thereof or of the breach of the said covenants and conditions, are fully paid or satisfied.

(5) The remedies conferred by this section take effect so far only as they might have been conferred by the conveyance whereby the *rent* or any part thereof is expressed to be charged or apportioned as aforesaid, but a trustee, personal representative, mortgagee or other person in a fiduciary position has, and shall be deemed always to have had, power to confer the same or like remedies.

(6) This section applies only if and so far as a contrary intention is not expressed in the conveyance whereby the *rent* or any part thereof is expressed to be charged or apportioned as aforesaid, and

takes effect subject to the terms of that conveyance and to the provisions therein contained.

(7) The remedies conferred by this section apply only where the conveyance whereby the *rent* or any part thereof is expressed to be charged or apportioned is made after the commencement of this Act, and do not apply where the rent is charged exclusively as aforesaid or legally apportioned with the consent of the owner or lessor.

(8) The rule of law relating to perpetuities does not affect the powers or remedies conferred by this section or any like powers or remedies expressly conferred, before or after the commencement of this Act, by an instrument.

Analysis of section 190.

It will be seen—

(1) That sub-sects. (1) and (2) apply exclusively to the case of a conveyance of part of land which is affected by a *rentcharge;*

(2) That sub-sects. (3) and (4) apply exclusively to a conveyance by *assignment* (not sub-demise) of part of land comprised in a *lease;*

(3) That sub-sects. (5) to (8) (inclusive) apply to *both* cases, "rent" in sub-sects. (5), (6) and (7) being used to include "rentcharge" and "rent reserved by the lease";

(4) That in sub-sect. (7) the words "with the consent of the owner or lessor" qualify as well the words "charged exclusively as aforesaid" as the words "legally apportioned"; and

(5) That, though by sub-sect. (7) the remedies conferred by this section (that is, by virtue of the section itself, and without being *expressly* conferred by the conveyance, and so far as not expressly *excluded* by the conveyance (*h*)) apply only to a conveyance made *after* the commencement of the Act, the exemption conferred by sub-sect. (8) from the rule of law relating to perpetuities applies not only to the powers or remedies *conferred by this section*, but also to any like powers or remedies *expressly conferred*, *before* or *after* the commencement of the Act, by an instrument.

Who may enforce the remedies.

It should be noticed also that the remedies conferred by sub-sects. (2) and (4) are conferred on the owner or lessee for the time being, who is injuriously affected by the default or

(*h*) See sub-sect. (6).

Part III. Chap. XV.

breach, and this apparently whether or not there is privity of contract or estate between such owner or lessee on the one hand and the defaulter on the other hand.

S. 191. Redemption and apportionment of rents.

Sect. 191 of the Act replaces, with considerable amendments, sect. 45 (*i*) of the Conveyancing Act, 1881, and is considered hereafter in connection with § 6 ("Sale of purely incorporeal hereditaments") of Chapter X. of the Treatise, which treats "Of Particular Titles" (*k*).

S. 192.

Sect. 192 of the Act is new and provides as follows:—

Apportionment of charges payable for redemption of tithe rentcharge. 17 & 18 Vict. c. 97.

192. An order of apportionment of a charge on land by way of annuity for redemption of tithe rentcharge may be made by the Minister under sections ten to fourteen (inclusive) of the Inclosure Act, 1854, on the application of any person interested, according to the provisions of the Inclosure Acts, 1845 to 1882, in the land charged or any part thereof without the concurrence of any other person:

Provided that the Minister may, in any such case, on the application of any person interested in the annuity, require as a condition of making the order that any apportioned part of the annuity which does not exceed the yearly sum of two pounds shall be redeemed forthwith.

Ss. 193, 194.

Space does not admit of doing more than mention sects. 193 and 194 of the Act, which relate to "Commons and Waste Lands." Both of these sections are new.

S. 195. Equitable charges in right of judgment debt, &c.

Sect. 195 of the Act re-enacts, without substantial modification, sect. 13 (*l*) of the Judgments Act, 1838; sub-sects. (1) and (2) (*l*) of sect. 2 of the Land Charges Act, 1900; and sect. 11 (*l*) of the Judgments Act, 1855.

S. 196. Regulations respecting notices.

Sect. 196 of the Act re-enacts sect. 67 (*m*) of the Conveyancing Act, 1881 (*n*).

(*i*) Repealed: see above, p. 17.
(*k*) Below, Part IX., Section X.
(*l*) Repealed: L. P. Act, s. 207 and Seventh Schedule.
(*m*) Repealed: see above, p. 17.
(*n*) By sub-sect. (5) of sect. 196 that section is to extend to notices required to be served by any instrument affecting property executed or coming into operation after the commencement of the Act unless a contrary intention appears.

Section xi.—Part XII. of the Act (sects. 201—209.)

Construction, Jurisdiction, and General Provisions.

S. 203. Payment into Court. jurisdiction and procedure.

Sub-sects. (1), (2), (4) and (5) of sect. 203 re-enact sub-sects. (1) to (7) of sect. 69 (*o*) of the Conveyancing Act, 1881.

Sub-sect. (3) defines "the Court" (*p*).

S. 204. Orders of Court conclusive.

Sect. 204 re-enacts substantially, but omitting the reference to the Settled Estates Act, 1877 (*q*), the provisions of sect. 70 (*o*) of the Conveyancing Act, 1881.

S. 208.

Sect. 208 is as follows:—

Application to the Crown.

208.—(1) Nothing in this Act shall be construed as rendering any property of the Crown subject to distress, or liable to be taken or disposed of by means of any distress.

(2) This Act shall not in any manner (save as otherwise expressly provided and except so far as it relates to undivided shares, joint ownership, leases for lives or leases for years terminable with life or marriage) affect or alter the descent, devolution or tenure or the nature of the estates and interests of or in any land for the time being vested in His Majesty either in right of the Crown or of the Duchy of Lancaster or of or in any land for the time being belonging to the Duchy of Cornwall and held in right or in respect of the said Duchy, but so nevertheless that, after the commencement of this Act, no estates, interests or charges in or over any such lands as aforesaid shall be conveyed or created, except such estates, interests or charges as are capable under this Act of subsisting or of being conveyed or created.

(3) Subject as aforesaid the provisions of this Act bind the Crown.

(*o*) Repealed: see above, p. 17.
(*p*) Above, Part I., Chap. VII.
(*q*) Repealed: S. L. Act, s. 119 and Fifth Schedule.

PART IV.

The Settled Land Act.

CHAPTER I.

INTRODUCTORY.

Repeal of S. L. Acts, 1882 to 1890

As we have seen (*a*), the Settled Land Acts, 1882 to 1890 (in this Part collectively referred to as "the repealed Acts," of which the Settled Land Act, 1882, is sometimes referred to as "the Act of 1882," and the Settled Land Act, 1890, as "the Act of 1890"), are, with a few exceptions (*a*), wholly repealed by the Settled Land Act (in this Part sometimes referred to as "the Act," or "the new Act").

How far re-enacted. Scheme of new Act.

Many sections of the repealed Acts are re-enacted, with or without modification, by the new Act; and it may be stated generally that the new Act reproduces the underlying principle of the Act of 1882, that, subject to the prescribed conditions, a tenant for life shall have, in regard to the settled land, all the powers of disposition of an absolute owner.

Changes in the conditions affecting settled land. "Vesting deed."

These conditions are, however, considerably modified by the new Act. For example, it is a condition precedent to the full exercise of his statutory powers by a tenant for life that the "trustees of the settlement" shall have executed, or concurred with the tenant for life in executing, a "vesting deed," declaring that the settled land is vested or shall vest in the tenant for life (*b*).

"Legal estate."

The settled land must so vest for the legal estate which is the subject of the settlement, that is, for an estate in fee simple absolute in possession or a term of years absolute (*c*). For,

(*a*) Above, p. 18. (*b*) S. L. Act, s. 13, below, p. 274.
(*c*) L. P. Act, s. 1, above, Part III., Chap. I.

as we have seen (*d*), it is a principle of the new conveyancing that the legal estate shall always be vested in the person who is for the time being beneficially entitled in possession, if of full age.

"Statutory owner."

In the case of settled land, where the tenant for life or, rather, the person who, if of full age, would be the tenant for life, or have the powers of a tenant for life (*e*), is an infant, or there is no tenant for life, the settled land must be vested in the "statutory owner," which expression is defined as follows:—

"Statutory owner" means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under this Act, but does not include the trustees of the settlement, where by virtue of an order of the court or otherwise the trustees have power to convey the settled land in the name of the tenant for life (*f*).

Who is "statutory owner."

It will be seen that, under this definition, there are two cases in which the need for a statutory owner may arise: (1) "during a minority," and (2) "at any other time when there is no tenant for life." These two cases appear to be mutually exclusive.

(1) During a minority. S. L. Act, s. 26.

The following section of the Act prescribes who, in case (1), will "have the powers of a tenant for life," or, in other words, be the "statutory owner":—

Infants, how to be affected.

26.—(1) Where an infant is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute or would if of full age be a tenant for life of or have the powers of a tenant for life over settled land, then, during the minority of the infant—

(a) if the settled land is vested in a personal representative, the personal representative, until a principal vesting instrument has been executed pursuant to the provisions of this Act; and

(b) in every other case, the trustees of the settlement;

shall have, in reference to the settled land and capital money, all the

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(*d*) Above, Part I., Chap. IV., p. 22.

(*e*) Under the new Act no person, not of full age, can be tenant for life or have the powers of a tenant for life. Under the Act of 1882 an infant could be a tenant for life; but he could not, of course, during infancy, exercise his powers as such, and the same had to be exercised on his behalf as provided by sect. 60 (not re-enacted) of the Act of 1882.

(*f*) See S. L. Act, s. 117 (1) (xxvi); and see Table of Definitions, above, Part I., Chap. VII.

Part IV. Chap. I.

powers conferred by this Act and the settlement on a tenant for life, and on the trustees of the settlement.

(2) If the settled land is vested in a personal representative, then, if and when during the minority the infant, if of full age, would have been entitled to have the legal estate in the settled land conveyed to or otherwise vested in him pursuant to the provisions of this Act, a principal vesting instrument shall, if the trustees of the settlement so require, be executed, at the cost of the trust estate, for vesting the legal estate in themselves, and in the meantime the personal representatives shall, during the minority, give effect to the directions of the trustees of the settlement, and shall not be concerned with the propriety of any conveyance directed to be made by those trustees if the conveyance appears to be a proper conveyance under the powers conferred by this Act or by the settlement, and the capital money, if any, arising under the conveyance is paid to or by the direction of the trustees of the settlement or into court, but a purchaser dealing with the personal representative and paying the capital money, if any, to him shall not be concerned to see that the money is paid to trustees of the settlement or into court, or to inquire whether the personal representative is liable to give effect to any such directions, or whether any such directions have been given.

(3) Subsection (2) of this section applies whether the infant becomes entitled before or after the commencement of this Act, and has effect during successive minorities until a person of full age becomes entitled to require the settled land to be vested in him.

(4) This section does not apply where an infant is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute jointly with a person of full age (for which case provision is made in the Law of Property Act, 1925 (*g*)), but it applies to two or more infants entitled as aforesaid jointly, until one of them attains full age.

15 Geo. 5, c. 20.

(5) This section does not apply where an infant would, if of full age, constitute the tenant for life or have the powers of a tenant for life together with another person of full age, but it applies to two or more infants who would, if all of them were of full age, together constitute the tenant for life or have the powers of a tenant for life, until one of them attains full age.

(6) Nothing in this section affects prejudicially any beneficial interest of an infant.

Subs. (1) (a). Personal representative.

Settled land may become vested in a personal representative under the provisions of the Administration Act (*h*).

Subss. (1) and (2). "Principal vesting instrument."

The provisions of the Act pursuant to which a principal vesting deed has to be executed are contained in sects. 4 to 8 of the Act and in the Second Schedule thereto (*i*).

(*g*) See above, Part III., Chap. VIII.
(*h*) Below, Part VII.
(*i*) Below, Chap. IV.

Case (2) is provided for by the following section of the Act:—

(2) At any other time when there is no tenant for life.

23.—(1) Where under a settlement there is no tenant for life nor, independently of this section, a person having by virtue of this Act the powers of a tenant for life then—

(a) any person of full age on whom such powers are by the settlement expressed to be conferred; and

(b) in any other case the trustees of the settlement;

shall have the powers of a tenant for life under this Act.

Powers of trustees, &c. when there is no tenant for life.

(2) This section applies to trustees of settlements of land purchased with money provided by Parliament in consideration of public services where the tenant in tail is restrained from barring or defeating his estate tail, except that, if the tenant in tail is of full age and capacity, the powers shall not be exercised without his consent, but a purchaser shall not be concerned to see or inquire whether such consent has been given.

[See *In re Craven Settled Estates*, (1926) Ch. 985.]

It will be seen from sub-sect. (1) of this section that a person of full age may be appointed by the settlement to exercise the powers of a tenant for life where there is no tenant for life nor, independently of this section, a person having the powers of a tenant for life.

Subs. (1). Power to appoint a person to exercise powers.

The person (if any) so appointed, and in any other case the trustees of the settlement, will be the "statutory owner" in any case to which this section applies.

In the definition of "statutory owner" the words "but does not include the trustees," &c. down to the end of the definition appear to refer to sects. 24 and 68 of the Act.

Trustees, where not the statutory owner.

Sect. 24 is as follows:—

24.—(1) If it is shown to the satisfaction of the court that a tenant for life, who has by reason of bankruptcy, assignment, incumbrance, or otherwise ceased in the opinion of the court to have a substantial interest in his estate or interest in the settled land or any part thereof, has unreasonably refused to exercise any of the powers conferred on him by this Act, or consents to an order under this section, the court may, on the application of any person interested in the settled land or the part thereof affected, make an order authorising the trustees of the settlement, to exercise in the name and on behalf of the tenant for life, any of the powers of a tenant for life under this Act, in relation to the settled land or the part thereof affected, either generally and in such manner and for such period as the court may think fit, or in a particular instance, and the court may by the order direct

As to a tenant for life who has parted with his interest.

Part IV. Chap. I.

that any documents of title in the possession of the tenant for life relating to the settled land be delivered to the trustees of the settlement.

(2) While any such order is in force, the tenant for life shall not, in relation to the settled land or the part thereof affected, exercise any of the powers thereby authorised to be exercised in his name and on his behalf, but no person dealing with the tenant for life shall be affected by any such order, unless the order is for the time being registered as an order affecting land.

(3) An order may be made under this section at any time after the estate or interest of the tenant for life under the settlement has taken effect in possession, and notwithstanding that he disposed thereof when it was an estate or interest in remainder or reversion.

Subs. (1). When an order may be made.

It is thought that jurisdiction to make an order under sub-section (1) arises only where (1) the tenant for life has by reason of bankruptcy, &c. ceased *in the opinion of the Court* to have a substantial interest in his estate or interest in the settled land or any part thereof, and (2) it is shown to the satisfaction of the Court either (a) that *such* tenant for life has unreasonably refused to exercise any of the powers conferred on him by the Act, or (b) that *such* tenant for life consents to an order under this section.

Sect. 68 is as follows:—

Provision enabling dealings with tenant for life. [S. L. Act, 1890, s. 12.]

68.—[(1) In the manner mentioned and subject to the provisions contained in this section—

(a) a sale], grant, lease, mortgage, charge or other disposition [of settled land], or of any easement, right, or privilege over the same [may be made to the tenant for life;] or

(b) capital money may be advanced on mortgage to him; [or

(c) a purchase may be made from him of land to be made subject to the limitations of the settlement; or

(d) an exchange may be made with him of settled land for other land;] and

(e) any such disposition, advance, purchase, or exchange as aforesaid may be made to, from, or with any persons of whom the tenant for life is one.

[(2) In every such case the trustees of the settlement shall, in addition to their powers as trustees, have all the powers of a tenant for life in reference to negotiating and completing the transaction,] and shall have power to enforce any covenants by the tenant for life, or, where the tenant for life is himself one of the trustees, then the other or others of them shall have such power, and the said powers of a tenant for life may be exercised by the trustees of the settlement in the name and on behalf of the tenant for life.

(3) This section applies, notwithstanding that the tenant for life is one of the trustees of the settlement, or that an order has been made authorising the trustees to act on his behalf, or that he is a lunatic, or a defective, but does not apply to dealings with any body of persons which includes a trustee of the settlement, not being the tenant for life, unless the transaction is either previously or subsequently approved by the court.

The following section of the Act is closely connected with the subject matter of sect. 26 (*j*), and may conveniently be set out here:— S. L. Acts, s. 27.

27.—(1) A conveyance of a legal estate in land to an infant alone, or to two or more persons jointly, both or all of whom are infants, for his or their own benefit shall operate only as an agreement for valuable consideration to execute a settlement by means of a principal vesting deed and a trust instrument in favour of the infant or infants, and in the meantime to hold the land in trust for the infant or infants. Effect of conveying legal estate to infant.

(2) Nothing in this Act prevents an equitable interest in settled land being vested in or transferred to an infant.

(3) Nothing in this Act affects the powers conferred by the Infant Settlements Act, 1855, provided that a legal estate in land is not vested in an infant. 18 & 19 Vict. c. 43.

(*j*) Above, p. 253.

CHAPTER II.

SETTLED LAND.

Section 1.—*Definitions.*

In order to appreciate the differences between the new Act and the repealed Acts as to what constitutes "settled land," it is necessary to consider the following definitions:—

1. "*Settlement.*"

Sect. 1 of the Settled Land Act enacts as follows:—

What constitutes a settlement. [S. L. Act, 1882, s. 2 (1).]

1.—(1) [Any deed, will, agreement for a settlement or other agreement, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after, the commencement of this Act, under or by virtue of which instrument or instruments any land], after the commencement of this Act, stands for the time being—

(i) [limited in trust for any persons by way of succession]; or

(ii) limited in trust for any person in possession—

(a) for an entailed interest whether or not capable of being barred or defeated;

(b) for an estate in fee simple or for a term of years absolute subject to an executory limitation, gift, or disposition over on failure of his issue or in any other event;

(c) for a base or determinable fee or any corresponding interest in leasehold land;

[Compare S. L. Act, 1882, s. 59.]

(d) being an infant, for an estate in fee simple or for a term of years absolute; or

(iii) limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event; or

(iv) limited to or in trust for a married woman of full age in possession for an estate in fee simple or a term of years absolute or any other interest with a restraint on anticipation; or

(v) charged, whether voluntarily or in consideration of marriage or by way of family arrangement, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person, or any less period, or of any capital

annual, or periodical sums for the portions, advancement, maintenance, or otherwise for the benefit of any persons, with or without any term of years for securing or raising the same;

[creates or is for the purposes of this Act a settlement and is in this Act referred to as a settlement, or as the settlement, as the case requires]: [S. L. Act, 1882, s. 2 (1).]

Provided that, where land is the subject of a compound settlement, references in this Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires.

(2) Where an infant is beneficially entitled to land for an estate in fee simple or for a term of years absolute and by reason of an intestacy or otherwise there is no instrument under which the interest of the infant arises or is acquired, a settlement shall be deemed to have been made by the intestate, or by the person whose interest the infant has acquired.

(3) An infant shall be deemed to be entitled in possession notwithstanding any subsisting right of dower (not assigned by metes and bounds) affecting the land, and such a right of dower shall be deemed to be an interest comprised in the subject of the settlement and coming to the dowress under or by virtue of the settlement.

Where dower has been assigned by metes and bounds, the letters of administration or probate granted in respect of the estate of the husband of the dowress shall be deemed a settlement made by the husband.

(4) [An estate or interest not disposed of by a settlement and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of this Act an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement.] [S. L. Act, 1882, s. 2 (2).]

(5) Where—

(a) a settlement creates an entailed interest which is incapable of being barred or defeated, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land; or

(b) the subject of a settlement is an entailed interest, or a base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land;

the reversion or right of reverter upon the cesser of the interest so created or settled shall be deemed to be an interest comprised in the subject of the settlement, and limited by the settlement.

(6) Subsections (4) and (5) of this section bind the Crown.

2. "*Settled Land.*"

Sect. 2 provides as follows:—

2. [Land which is] or is deemed to be [the subject of a settlement is for the purposes of this Act settled land, and is in relation to the settlement referred to in this Act as the settled land.] What is settled land. [S. L. Act, 1882, s. 2 (3).]

Part IV. Chap. II.

3. "*Compound Settlement.*"

There is, strictly speaking, no definition of "compound settlement" in the Settled Land Act, but the provisions of the Act make clear what is the meaning of that expression for the purposes of the Act; and the policy of the Act appears to be that where there *is* a compound settlement, that settlement is "the settlement" for all the purposes of the Act.

Thus, as we have seen (*a*), it is provided by sub-sect. (1) of sect. 1 of the Act that where land is the subject of a compound settlement, references in the Act to the settlement shall be construed as meaning such compound settlement, unless the context otherwise requires.

Again, sect. 31 of the Act provides as follows:—

As to trustees of compound settlements.

31.—(1) Persons who are for the time being trustees for the purposes of this Act of an instrument which is a settlement, or is deemed to be a subsisting settlement for the purposes of this Act, shall be the trustees for the purposes of this Act of any settlement constituted by that instrument and any instruments subsequent in date or operation.

(2) This section applies to instruments coming into operation before as well as after the commencement of this Act, but shall have effect without prejudice to any appointment made by the court before such commencement of trustees of a settlement constituted by more than one instrument, and to the power of the court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement or is made thereafter this section shall not apply or shall cease to apply to the settlement consisting of the instruments to which the appointment relates.

With this section of the Act must be read sect. 3, which defines what is "deemed to be a subsisting settlement for the purposes of this Act."

Sect. 3 is as follows:—

Duration of settlements.

3. Land which has been subject to a settlement shall be deemed for the purposes of this Act to remain and be settled land, and the settlement shall be deemed to be a subsisting settlement for the purposes of this Act so long as—

(a) any limitation, charge, or power of charging under the settlement subsists, or is capable of being exercised; or

(*a*) Above, p. 259.

(b) the person who, if of full age, would be entitled as beneficial owner to have that land vested in him for a legal estate is an infant.

Compound settlement, how constituted.

Thus, where, in order to ascertain to what limitations, charges or powers of charging (*b*) land is for the time being subject, it is necessary to have regard to two or more instruments, each of which is "a subsisting settlement for the purposes of the Act," those instruments will together constitute a compound settlement, and the Settled Land Act trustees, if any, or if there are none, then the Settled Land Act trustees, if and when appointed, of that one of those instruments which is earliest in date or operation will be the trustees of the compound settlement, and as such "the trustees of the settlement" for the purposes of the Act, and the only trustees competent to execute the necessary vesting deed.

Settlement subsisting at commencement of Act.

In the Settled Land Act "a settlement subsisting at the commencement of the Act" includes a settlement created by virtue of the Act immediately on the commencement thereof (*c*).

Automatic conversion of "unsettled" into "settled" land.

It follows from this definition and, as it would seem, apart from this definition, from the definition of "settlement" in sect. 1 of the Act (*d*), that land which, immediately before the commencement of the Act, was not settled land may become such by virtue of the Act immediately on the commencement thereof.

Example of such conversion.

A striking example of such automatic conversion of unsettled into settled land is afforded by the cases, which are believed to be numerous in various parts of the country, where land subject, along with other lands in the same ownership of ample value, to a jointure rentcharge or other family charge which could not be overreached by the vendor's conveyance, has been sold with an indemnity by the vendor against such charge.

(*b*) In sect. 3 (a) "limitation" appears to refer to any such limitation as is specified in paragraph (i), (ii), (iii) or (iv) of sub-sect. (1) of sect. 1 of the Act; "charge" appears to refer to any such charge as is specified in paragraph (v) of the same sub-section; and "power of charging" appears to *extend* the definition of settlement beyond that contained in the same sub-section by including an instrument under which there is still subsisting a power to charge, *even though not exercised.*

(*c*) See Table of Definitions, above, Part I., Chap. VII.

(*d*) Above, p. 258.

Part IV. Chap. II.

Land sold with indemnity against a family charge.

Such an indemnity, though in most cases an ample protection to the purchaser, did not of course release the land sold from the family charge; and accordingly, immediately after the commencement of the Act, if the charge is still subsisting, the land sold with such an indemnity "stands charged" within the meaning of paragraph (v) of sub-sect. (1) of sect. 1 of the Act and becomes settled land; with the result that, unless the purchaser or his successors in title can procure a release of the family charge, trustees of the settlement (*e*) must be appointed, and a vesting deed must be executed.

4. "*Tenant for Life.*"

In the Settled Land Act "tenant for life" includes a person (not being a statutory owner) who has the powers of a tenant for life under the Act, and also (where the context requires) one of two or more persons who together constitute the tenant for life, or have the powers of a tenant for life (*f*).

Sect. 19 of the Act is as follows:—

Who is tenant for life.

[S. L. Act. 1882, s. 2 (5).]

19.—(1) [The person] of full age [who is for the time being beneficially entitled under a settlement to possession of settled land for his life is for the purposes of this Act the tenant for life of that land and the tenant for life under that settlement.]

[Ib. (6).]

(2) [If in any case there are two or more persons] of full age [so entitled as joint tenants, they together constitute the tenant for life for the purposes of this Act.]

(3) If in any case there are two or more persons so entitled as joint tenants and they are not all of full age, such one or more of them as is or are for the time being of full age is or (if more than one) together constitute the tenant for life for the purposes of this Act, but this subsection does not affect the beneficial interests of such of them as are not for the time being of full age.

[Ib. (7).]

(4) [A person being tenant for life within the foregoing definitions shall be deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest therein, is incumbered or charged in any manner or to any extent], and notwithstanding any assignment by operation of law or otherwise of his estate or interest under the settlement, whether before or after it

(*e*) In such a case the settlement will almost necessarily be a compound settlement, starting with the instrument which created the family charge; and, unless the trustees of *that* instrument consent to act, application must be made to the Court to appoint trustees. See also sect. 21 of the Act, below, p. 307.

(*f*) See Table of Definitions, above, Part I., Chap. VII.

came into possession, other than an assurance which extinguishes that estate or interest.

Subs. (1). "Possession."

"Possession" includes receipt of rents and profits or the right to receive the same, if any; and "income" includes rents and profits (*g*).

Subs. (2). "Joint tenants."

Sub-sect. (6) of sect. 2 of the Act of 1882 provided that "If, in any case, there are two or more persons so entitled as tenants in common, or as joint tenants, or for other concurrent estates or interests, they together constitute the tenant for life for purposes of this Act." Under the new Act undivided shares in land can only take effect behind a trust for sale (*h*), and accordingly tenants in common cannot together constitute the tenant for life.

Subs. (4). An assurance which extinguishes the estate or interest of a tenant for life.

The words "other than an assurance," &c. in sub-sect. (4) refer to an assurance operating as a surrender of the life estate to the next remainderman within the meaning of sect. 105 of the Act (*i*).

Sect. 20 of the Act is as follows:—

Other limited owners having powers of tenant for life.

20.—[(1) Each of the following persons] being of full age [shall, when his estate or interest is in possession, have the powers of a tenant for life under this Act, (namely):—

(i) A tenant in tail, including a tenant in tail after possibility of issue extinct, and a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and although the reversion is in the Crown, but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services;] [S. L. Act, 1882, s. 58 (1) (i) & vii).]

[(ii) A person entitled to land for an estate in fee simple] or for a term of years absolute [with] or subject to, in any of such cases, [an executory limitation, gift, or disposition over on failure of his issue or in any other event;] [Ib. (ii).]

[(iii) A person entitled to a base] or determinable [fee, although the reversion] or right of reverter [is in the Crown], or to any corresponding interest in leasehold land; [Ib. (iii).]

[(iv) A tenant for years determinable on life, not holding merely under a lease at a rent;] [Ib. (iv).]

(*g*) See Table of Definitions, above, Part I., Chap. VII.
(*h*) S. L. Act, s. 36 (4), above, Part III., Chap. V., p. 160.
(*i*) See below, Part IX., Section IX.

Part IV. Chap. II.

[(v) A tenant for the life of another, not holding merely under a lease at a rent;]

[Ib. (v).]

[Ib. (vi).]

[(vi) A tenant for his own or any other life, or for years determinable on life, whose estate is liable to cease in any event during that life, whether by expiration of the estate, or by conditional limitation, or otherwise, or to be defeated by an executory limitation, gift, or disposition over, or is subject to a trust for accumulation of income for any purpose;]

[Ib. (viii).]

(vii) [A tenant by the curtesy;]

[Ib. (ix).]

[See *In re Llanover Settled Estates*, (1926) Ch. 626.]

(viii) [A person entitled to the income of land under a trust or direction for payment thereof to him during his own or any other life, whether or not subject to expenses of management] or to a trust for accumulation of income for any purpose, [or until sale of the land, or until forfeiture,] cesser or determination by any means [of his interest therein,] unless the land is subject to an immediate binding trust for sale;

(ix) A person beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates, interests, charges, or powers of charging, subsisting or capable of being exercised under a settlement;

(x) A married woman entitled to land for an estate in fee simple or for a term of years absolute subject to a restraint on anticipation.

[S. L. Act, 1882, s. 58 (2) & (3).]

[(2) In every such case] as is mentioned in subsection (1) of this section, [the provisions of this Act referring to a tenant for life, either as conferring powers on him or otherwise, shall extend to each of the persons aforesaid, and any reference in this Act to death as regards a tenant for life shall, where necessary, be deemed to refer to the determination by death or otherwise of the estate or interest of the person on whom the powers of a tenant for life are conferred by this section.]

[S. L. Act, 1884, s. 8.]

(3) [For the purposes of this Act the estate or interest of a tenant by the curtesy shall be deemed to be an estate or interest arising under a settlement made by his wife.]

[S. L. Act, 1882, s. 58 (1) (i) & (iii).]

(4) [Where the reversion] or right of reverter or other reversionary right [is in the Crown, the exercise by a person on whom the powers of a tenant for life are conferred by this section of his powers under this Act, binds the Crown.]

Subs. (1) (viii). Land subject to a trust for sale.

The reason for the exception in sub-sect. (1) (viii) of "land subject to an immediate binding trust for sale" is that the beneficiaries under such a trust have, strictly speaking, no interests, *even equitable*, in the land itself, but only beneficial interests in the net proceeds of sale, and in the net rents and

profits until sale, and no such beneficiary can be, or have the powers of, a tenant for life (*j*).

Section ii.—*Comparison of the New with the Repealed Acts.*

S. L. A. s. 20. (2). Extension of provisions referring to a tenant for life.

The first part of sub-sect. (2) of the above sect. 20 of the Settled Land Act re-enacts in substance sub-sect. (2) of sect. 58 of the Act of 1882. The effect of the latter sub-section was to extend the definition of a settlement to cases not included under sect. 2 (1) of the latter Act (*k*).

Land "settled" under the new Act, but not under the repealed Acts.

Having regard to such extension, it appears that, apart from the inclusion of leasehold land as a possible subject of settlement owing to the power conferred by the Property Act to create an "entailed interest" in leasehold land (*l*), there are three cases in which land will be "settled land" under the new Act which was not "settled land" under the repealed Acts.

Case 1. Land limited contingently. S. L. Act, s. 1 (1), para. (iii).

The first case arises where, under a settlement, land stands for the time being "limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event" (*m*). The limitation here contemplated appears to be a limitation under which the rents and profits, pending the happening or failure of the contingency, are so applicable, *e.g.*, as being subject to a discretionary trust, that during that period there is no tenant for life nor, independently of sect. 23 (*n*) of the Act, a person having the powers of a tenant for life (*o*). In such a case the land will, under the new Act, be "settled land," and under sect. 23 (*n*) the person (if any) nominated for that purpose by the settlement, or, otherwise, the trustees of the settlement, will have the powers of a tenant for life, and be the "statutory owner."

(*j*) See above, Part III., Chap. V.

(*k*) See *In re Pocock and Prankerd's Contract*, (1896) 1 Ch. 302. Sect. 20 (2) of the S. L. Act must have the same effect on the definition of a settlement in sect. 1 of that Act. For example, sect. 20 (1) (ix) goes further than sect. 1 (1) (v) by including "powers of charging." See above, p. 261, n. (*b*).

(*l*) Above, Part III., Chap. IX., p. 184.

(*m*) S. L. Act, s. 1 (1) (iii), above, p. 258.

(*n*) Above, p. 255.

(*o*) Land so circumstanced was not "settled land" under the repealed Acts. See *In re Atkinson*, 30 C. D. 605; 31 C. D. 501. See also *In re Horne's Settled Estates*, 39 C. D. 84; *In re Astor*, (1922) 1 Ch. 364; and compare *Re Walmsley's Settled Estates*, 105 L. T. 332.

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Case 2. Land subject to a restraint on anticipation. S. L. Act, s. 1 (1), para. (iv).

The second case arises where, under a settlement, land stands for the time being "limited to or in trust for a married woman of full age in possession for an estate in fee simple or a term of years absolute, or any other interest with a restraint on anticipation" (*p*). In such a case the land will be "settled land," and the married woman, at any rate if entitled in possession "for an estate in fee simple or for a term of years absolute," will, if of full age, have the powers of a tenant for life (*q*).

Must be a restraint on *corpus*.

This case arises, it is thought, only where the restraint is on the *corpus* of the land (*r*). For, altogether apart from the paragraph now under consideration, a married woman entitled in possession *for her life* subject to a restraint on the *income*, is under the new Act, and was under the repealed Acts (*s*), a tenant for life or a person having the powers of a tenant for life, as appears from the following section of the new Act and the enactments noted in the margin:—

Married woman, how to be affected. [See S. L. Act, 1882, s. 61 (1) to (5).] [S. L. Act, 1882, s. 61 (6).]

25.—(1) The foregoing provisions of this Act apply to a married woman of full age, whether or not she is entitled to her estate or interest for her separate use or as her separate property, and she, without her husband, may exercise the powers of a tenant for life under this Act.

(2) [A restraint on anticipation in the settlement shall not prevent the exercise by her of any power under this Act.]

"Or any other interest."

In the circumstances it is not clear what kind of interest is intended by the words "or any other interest" in paragraph (iv) of sect. 1 (1) of the Act, especially as these words do not occur in paragraph (x) of sect. 20 (1).

Case 3. Land "charged." S. L. Act, s. 1 (1), para. (v).

The third case arises where, under a settlement, land stands for the time being "charged" with any such rentcharge, capital, annual, or periodical sums as are mentioned respectively in paragraph (v) of sect. 1 (1) of the Act.

(*p*) S. L. Act, s. 1 (1) (iv), above, p. 258.

(*q*) *Ibid.* sect. 20 (1) (x), above, p. 264.

(*r*) In such a case, under the repealed Acts, the land was not settled land and the married woman was not a tenant for a life nor a person having the powers of a tenant for life: see *Bates* v. *Kesterton*, (1896) 1 Ch. 157. As to the conditions under which a restraint may attach to *corpus*, see *In re Bown*, 27 C. D. 411.

(*s*) Together with her husband, if not entitled for her separate use, or for her separate property, or as a *feme sole;* but, in any case, notwithstanding a restraint on anticipation.

What charges are referred to.

It will be seen that under this paragraph the charges must have been created "voluntarily or in consideration of marriage or by way of family arrangement," and must consist of a rentcharge for the life of a person or any less period, or a capital, annual, or periodical sum for the portions, advancement, maintenance, or otherwise for the benefit of some person or persons. The charges contemplated include, if they are not co-extensive with, what are commonly known as "family charges." They do not, of course, include charges by way of mortgage for securing the repayment of money.

Application of para. (v).

This paragraph is probably intended to apply where, *but for the charge*, the land would be unsettled land, and contemplates the case of a person who, under paragraph (ix) of sect. 20 (1) of the Act, if of full age and entitled in possession, will have the powers of a tenant for life, if "beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates, interests, charges, or powers of charging, subsisting or capable of being exercised under a settlement" (*t*).

Family charges.

Cases under the old Acts.

The cases under the repealed Acts went a long way towards holding that, where land was subject to any such charge as is referred to in paragraph (v) of sect. 1 (1) of the new Act, the person who, subject to the charge, was beneficially entitled in possession to the land was, or had the powers of, a tenant for life (*u*). The case which seems to have gone furthest is *In re Monckton's Settlement*, (1917) 1 Ch. 224, where, by reason of a jointure and portions which would or might take effect on his death, a person who under a settlement had become entitled in possession to an estate in fee simple in land was held to be, or to have the powers of, a tenant for life. The limit was reached in the case of *In re Trafford's Settled Estates*, (1915) 1 Ch. 9, where it was unsuccessfully contended that a tenant in tail, subject to certain annuities, who had disentailed and thereby become entitled in fee simple, still had the powers of a tenant for life so as to be able to override the annuities, notwithstanding that he had disentailed.

(*t*) As already pointed out, above, p. 261, n. (*b*), this paragraph extends the definition of settled land by including powers of charging.

(*u*) Most of these cases are collected and discussed or referred to in Vol. I. of the Treatise, pp. 288 to 290, and the notes thereto, in the passage introduced by the marginal note "What is 'the settlement'?"

CHAPTER III.

TRUSTEES OF THE SETTLEMENT.

S. L. Act, s. 30.

SECT. 30 of the Act defines who are the "trustees of the settlement" for the purposes of the Act, and, as will be seen, the definition does not differ substantially from that in the Act of 1882, as amended by the Act of 1890.

The section is as follows:—

Who are trustees for purposes of Act.

30.—(1) Subject to the provisions of this Act, [the following persons are trustees of a settlement for the purposes of this Act,] and are in this Act referred to as the "trustees of the settlement" or "trustees of a settlement," namely—

[S. L. Act, 1882, s. 2 (8).]

(i) [the persons, if any, who are for the time being under the settlement, trustees with power of sale of the settled land] (subject or not to the consent of any person)[, or with power of consent to or approval of the exercise of such a power of sale, or if there are no such persons; then]

[Ib.]

(ii) [the persons, if any, for the time being, who are by the settlement declared to be trustees thereof for the purposes of] the Settled Land Acts, 1882 to 1890, or any of them, or [this Act, or if there are no such persons; then]

[S. L. Act, 1890, s. 16 (i).]

(iii) [the persons, if any, who are for the time being under the settlement trustees with power of or upon trust for sale of any other land comprised in the settlement and subject to the same limitations as the land to be sold] or otherwise dealt with[, or with power of consent to or approval of the exercise of such a power of sale, or, if there are no such persons; then]

[Ib. (ii).]

(iv) [the persons, if any, who are for the time being under the settlement trustees with future power of sale, or under a future trust for sale of the settled land, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or trust takes effect in all events or not], or, if there are no such persons; then

(v) the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate the subject of the settlement.

(2) Paragraphs (i) (iii) and (iv) of the last preceding subsection take effect in like manner as if the powers therein referred to had not by this Act been made exercisable by the tenant for life or statutory owner.

(3) Where a settlement is created by will, or a settlement has arisen by the effect of an intestacy, and apart from this subsection there would be no trustees for the purposes of this Act of such settlement, then the personal representatives of the deceased shall, until other trustees are appointed, be by virtue of this Act the trustees of the settlement, but where there is a sole personal representative, not being a trust corporation, it shall be obligatory on him to appoint an additional trustee to act with him for the purposes of this Act, and the provisions of the Trustee Act, 1925, relating to the appointment of new trustees and the vesting of trust property shall apply accordingly.

S. 30 (1), para. (v). Trustees appointed by beneficiaries.

Paragraph (v) of sub-sect. (1) of this section, though new, appears to do no more than give statutory effect to the principle of the decision in *In re Spearman Settled Estates*, (1906) 2 Ch. 502, that the persons for the time being entitled under a settlement, if they are all *sui juris* and between them absolutely entitled to the whole beneficial interest in the settled land, can together appoint trustees of the settlement.

S. 30 (1), paras (i), (iii) and (iv), effect of.

Sub-sect. (2) of this section is explained by the fact that, after the commencement of the new Act, powers of sale or other powers given to the trustees of the settlement, which under the Act of 1882 (*a*) were exercisable by them with the consent of the tenant for life, are as a general rule exercisable only by the tenant for life or statutory owner, as appears from the following sections of the Act:—

Saving for and exercise of other powers.

108.—[(1) Nothing in this Act shall take away, abridge, or prejudicially affect any power for the time being subsisting under a settlement, or by statute or otherwise, exercisable by a tenant for life, or] (save as hereinafter provided) [by trustees with his consent, or on his request, or by his direction, or otherwise, and the powers given by this Act are cumulative.] [S. L. Act, 1882, s. 56 (1).]

[Ib. (2).]

[(2) In case of conflict between the provisions of a settlement and the provisions of this Act, relative to any matter in respect whereof the tenant for life] or statutory owner [exercises or contracts or intends to exercise any power under this Act, the provisions of this Act shall prevail; and, notwithstanding anything in the settlement,] any power (not being merely a power of revocation or appointment) relating to the settled land thereby conferred on the trustees of the settlement or other persons exercisable for any purpose, whether or

(*a*) S. L. Act, 1882, s. 56 (2).

Part IV. Chap. III.

not provided for in this Act, shall, after the commencement of this Act, be exercisable by the tenant for life or statutory owner as if it were an additional power conferred on the tenant for life within the next following section of this Act and not otherwise.

[Ib. 3.] [(3) If a question arises or a doubt is entertained respecting any matter within this section, the tenant for life] or statutory owner, [or the trustees of the settlement, or any other person interested, under the settlement may apply to the court for its decision thereon, and the court may make such order respecting the matter as the court thinks fit.]

Saving for additional or larger powers under settlement.

[S. L. Act, 1882, s. 57 (1).]

[Ib. (2).]

109.—[(1) Nothing in this Act precludes a settlor from conferring on the tenant for life, or] (save as provided by the last preceding section) [on the trustees of the settlement, any powers additional to or larger than those conferred by this Act.]

[(2) Any additional or larger powers so conferred shall, as far as may be, notwithstanding anything in this Act, operate and be exercisable in the like manner, and with all the like incidents, effects, and consequences, as if they were conferred by this Act,] and, if relating to the settled land, as if they were conferred by this Act on a tenant for life.

S. 30 (3). Personal representatives.

In the Settled Land Act, "personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and where there are special representatives for the purposes of settled land means those personal representatives (*b*). It is thought that this sub-section applies to personal representatives, whether or not they have fully administered, and not only to personal representatives while acting as such.

Trustee Act, 1925.

The provisions of the Trustee Act referred to in this sub-section are stated hereafter (*c*).

"Additional trustee."

The power to appoint an additional trustee is new, and is conferred by sect. 36 (6) of the Trustee Act (*c*).

"Settlement created by will."

The sub-section apparently applies to a settlement created by will, whether the will comes into operation before or after the commencement of the Act.

"Settlement arising on an intestacy."

It is thought that by a settlement arising by the effect of an intestacy is meant a settlement arising by virtue of the

(*b*) See Table of Definitions, above, Part I., Chap. VII. As to "special personal representatives," see A. E. Act, s. 22, below, Part VII., Chap. III., p. 437.

(*c*) Below, Part V.

provisions of the Administration Act, under which, on the death (*d*) of a person intestate as to any real or personal estate, such estate is to be held by his personal representatives upon trust for sale and conversion, and "the residuary estate of the intestate" is to be distributed in the manner or held upon the trusts therein mentioned (*e*).

S. 31. As to trustees of compound settlements.

We have already seen (*f*) what are compound settlements for the purposes of the Act, and who are the trustees of a compound settlement and, as such, "the trustees of the settlement" for the purposes of the Act.

S. 32.

The following section deals with "referential settlements":—

Trustees of referential settlements.

32.—(1) Where a settlement takes or has taken effect by reference to another settlement, the trustees for the time being of the settlement to which reference is made shall be the trustees of the settlement by reference, but this section does not apply if the settlement by reference contains an appointment of trustees thereof for the purposes of the Settled Land Acts, 1882 to 1890, or any of them, or this Act.

(2) This section applies to instruments coming into operation before as well as after the commencement of this Act, but shall have effect without prejudice to any appointment made by the court before such commencement of trustees of a settlement by reference, or of the compound settlement consisting of a settlement and any other settlement or settlements made by reference thereto, and to the power of the court in any case after such commencement to make any such appointment, and where any such appointment has been made before such commencement or is made thereafter this section shall not apply or shall cease to apply.

(3) In this section "a settlement by reference to another settlement" means a settlement of property upon the limitations and subject to the powers and provisions of an existing settlement, with or without variation.

This section gives statutory sanction to the decision in *In re Arran and Knowlesden and Creer's Contract*, (1912) 2 Ch. 141, referred to in note (*i*) on page 286 of the Treatise.

S. 33, subs. (1). Continuance of trustee-ships.

Sub-sect. (1) of sect. 33 of the Act is important as providing for an unbroken succession of trustees of a settlement so long as that settlement "is subsisting or deemed to be subsisting for

(*d*) After the commencement of that Act: see A. E. Act, s. 54, above, Part I., Chap. III., p. 15.
(*e*) See A. E. Act, ss. 33, 43, 47, below, Part VII.
(*f*) Above, Part IV., Chap. II., p. 260.

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the purposes of the Act" (*g*), and, in particular, for the succession to office as trustees of a settlement for the purposes of the new Act of trustees who were trustees of a settlement for the purposes of the repealed Acts.

Ib. subs. (2). Dispositions under compound settlements.

Sub-sect. (2) (*h*) of the same section provides in effect that where settled land is or has been (*i*) expressed to be disposed of under a compound settlement of which trustees were appointed by the Court, and certain other conditions are fulfilled, then, without prejudice to the rights mentioned in that sub-section, the title of the person to whom the disposition is made shall not be impeachable on the ground—

(a) that the instruments mentioned in the order did not constitute a compound settlement; or

(b) that those instruments were not all the instruments at the date of the order or of the disposition constituting the compound settlement of the land disposed of; or

(c) that any of the instruments mentioned in the order did not form part of the settlement of the land disposed of, or had ceased to form part of the settlement at the date of the disposition.

Ib. subs. (3). Confirmation of past dispositions.

Sub-sect. (3) of the same section shows that one object of the section is to confirm dispositions (*k*) made before the commencement of the Act.

Sub-sects. (1) and (3) are as follows:—

33.—(1) Where any persons have been appointed or constituted trustees of a settlement, whether by an order of the court or otherwise, or have by reason of any power of sale, or trust for sale, or by reason of a power of consent to, or approval of, the exercise of a power of sale, or by virtue of this Act, or otherwise at any time become trustees of a settlement for the purposes of the Settled Land Acts, 1882 to 1890, or this Act, then those persons or their successors in office shall remain and be trustees of the settlement as long as that settlement is subsisting or deemed to be subsisting for the purposes of this Act.

(*g*) See S. L. Act, s. 3, above, Part IV., Chap. II.

(*h*) This sub-section is not here printed, but should be referred to whenever a question arises as to the validity or effect of a disposition under a compound settlement of which trustees were appointed by the Court.

(*i*) That is, after or before the commencement of the Act.

(*k*) That is, no doubt, of the kind referred to in the previous sub-sections.

In this subsection "successors in office" means the persons who, by appointment or otherwise, have become trustees for the purposes aforesaid.

. . . . . .

(3) The foregoing provisions of this section operate to confirm all dispositions made before the commencement of this Act, but not so as to render invalid or prejudice any order of the court, or any title or right acquired before the commencement of this Act, and [operates] [*Sic.*] without prejudice to any appointment already made by the court of trustees of a settlement, and to the power of the court in any case hereafter to make any such appointment.

S. 34. Appointment of trustees by the Court.

Sect. 34 of the Act re-enacts sect. 38 of the Act of 1882 without amendment, except that the "statutory owner" is included among those who may apply to the Court for the appointment of trustees of a settlement.

CHAPTER IV.

MODE OF EFFECTUATING SETTLEMENTS.

Section 1.—*Introductory.*

Condition precedent to efficacy of settlements.

S. L. Act, s. 13.

It is a condition precedent to the exercise by a tenant for life or statutory owner of his statutory powers under the Act, that a vesting instrument shall have been executed or made pursuant to the Act in respect of the settled land.

This condition is imposed by sect. 13 of the Act, which is as follows:—

Dispositions not to take effect until vesting instrument is made.

13. Where a tenant for life or statutory owner has become entitled to have a principal vesting deed or a vesting assent executed in his favour, then until a vesting instrument is executed or made pursuant to this Act in respect of the settled land, any purported disposition thereof *inter vivos* by any person, other than a personal representative (not being a disposition which he has power to make in right of his equitable interests or powers under a trust instrument), shall not take effect except in favour of a purchaser of a legal estate without notice of any settlement, but, save as aforesaid, shall operate only as a contract for valuable consideration to carry out the transaction after the requisite vesting instrument has been executed or made, and a purchaser of a legal estate shall not be concerned with such disposition unless the contract is registered as a land charge.

"Vesting instrument."

In this section "vesting instrument" is a general expression including "vesting deed" and "vesting assent" (*a*).

Operation and application of s. 13.

The section *comes into operation* in default of, and pending, the execution or making pursuant to the Act in respect of settled land of a vesting instrument which the tenant for life or statutory owner of that land *has become entitled* to have

(*a*) For the meanings in the S. L. Act of "vesting deed," "vesting assent," "vesting instrument," and "trust instrument," see Table of Definitions, above, Part I., Chap. VII.

executed in his favour; and, while thus in operation, the section applies only to any "purported disposition" (1) of the settled land, (2) *inter vivos*, (3) by any person other than a personal representative, and (4) not being a disposition which *he*, that is, any such person as aforesaid, has power to make in right of his equitable interests or powers under a trust instrument.

Semble, applies only to dispositions of legal estates.

Having regard to these limitations on the applicability of the section, it appears to apply only to a disposition purporting to create or transfer a *legal estate* in the settled land, and in particular to any such disposition by the tenant for life or statutory owner, *purporting* to act in exercise of his statutory powers.

Conveyance under s. 72.

This view is supported by the provisions of sect. 72 (*b*) of the Act, under which the powers of disposition thereby given to a tenant for life extend only to *the estate or interest vested or declared to be vested in him by the last or only vesting instrument affecting the settled land.*

Effect of "purported disposition."

It will be seen that, in favour of a "purchaser" (*c*) of a "legal estate" (*c*) without notice (*d*) of any settlement, any "purported disposition" to which the section applies will "take effect," that is, apparently, such effect, if any, as apart from the requirements of the section it could have had; but that, save as aforesaid, it will operate only as "a contract for valuable consideration" to carry out the transaction after the requisite vesting instrument has been executed or made, and a purchaser of a legal estate will not be concerned with such disposition unless "the contract" is registered as a land charge (*e*).

"Contract for valuable consideration."

It is not quite clear what is the effect of the words "as a contract for valuable consideration." They may mean only "as if it were a contract for valuable consideration," whether the "purported disposition" was in fact voluntary or for value; or the effect of the words may be to restrict the appli-

(*b*) Below, p. 326.
(*c*) For the meanings of "purchaser" and "legal estate" in the S. L. Act, see Table of Definitions, above, Part I., Chap. VII.
(*d*) As to "notice," see above, Part III., Chap. X.
(*e*) That is, as being "an estate contract": see L. C. Act, s. 10 (1), Class C (iv), below, Part VI.

cation of the section to "purported dispositions" for valuable consideration.

Registration of "the contract."

"The contract," unless registered before the completion of the purchase, would be void as against a purchaser of the legal estate if, but only if, he were a purchaser for money or money's worth (*f*). If it were so registered, the purchaser would have "actual" notice of the contract (*g*), and might be affected with "constructive" notice of the settlement (*h*).

"Equitable interests and powers."

The section does not apply to a disposition which a person has power to make, and does make, in right of his equitable interests or powers under a trust instrument. It would not therefore, it seems, invalidate such a disposition as a disentailing assurance by a tenant in tail in possession or the release of a jointure rentcharge; and if as the result of such a disentailing assurance or release the land should cease to be settled land, no vesting instrument would, apparently, be necessary.

S. 13 applies to *all* settlements.

Sect. 13 applies to all settlements (*i*), whether made before or after the commencement of the Act, and whether made *inter vivos* or by will. It will be convenient to consider the requirements of the Act as to the mode of effectuating or giving effect to settlements, first, as regards "future settlements," that is, settlements made or coming into operation after the commencement of the Act, and secondly, as regards "existing settlements," that is, settlements subsisting at the commencement of the Act.

Section ii.—*Future Settlements.*

(a) *Settlements* inter vivos.

Settlements of legal estates *inter vivos*.

After the commencement of the Act the normal and only regular way of effecting a settlement of a *legal estate* in land *inter vivos* will be by two deeds, namely, a vesting deed and a trust instrument, and such a settlement, if effected in any other way, will not operate to transfer or create a *legal estate*.

(*f*) See L. C. Act, s. 13 (2), below, Part VI.
(*g*) See L. P. Act, s. 198, above, Part III., Chap. X.
(*h*) See *ibid.*, s. 199, above, Part III., Chap. X.
(*i*) Not being settlements or dispositions on trust for sale, see above, Part III., Chap. V., p. 155.

This is provided for by the following section of the Settled Land Act:—

S. L. Act, s. 4. Authorised method of settling land *inter vivos*.

4.—(1) Every settlement of a legal estate in land *inter vivos* shall, save as in this Act otherwise provided, be effected by two deeds, namely, a vesting deed and a trust instrument and if effected in any other way shall not operate to transfer or create a legal estate.

(2) By the vesting deed the land shall be conveyed to the tenant for life or statutory owner (and if more than one as joint tenants) for the legal estate the subject of the intended settlement:

Provided that, where such legal estate is already vested in the tenant for life or statutory owner, it shall be sufficient, without any other conveyance, if the vesting deed declares that the land is vested in him for that estate.

(3) The trust instrument shall—

(a) declare the trusts affecting the settled land:

(b) appoint or constitute trustees of the settlement;

(c) contain the power, if any, to appoint new trustees of the settlement;

(d) set out, either expressly or by reference, any powers intended to be conferred by the settlement in extension of those conferred by this Act;

(e) bear any *ad valorem* stamp duty which may be payable (whether by virtue of the vesting deed or otherwise) in respect of the settlement.

S. L. Act, s. 5. "Principal vesting deed."

"Principal vesting deed" is in sect. 5 of the Act defined as meaning "every vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement." The same section prescribes what "statements and particulars" are to be contained in a principal vesting deed.

Sect. 5 is as follows:—

Contents of vesting deeds.

5.—(1) Every vesting deed for giving effect to a settlement or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement (in this Act referred to as a "principal vesting deed") shall contain the following statements and particulars, namely:—

(a) A description, either specific or general, of the settled land;

(b) A statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the settled land;

(c) The names of the persons who are the trustees of the settlement;

(d) Any additional or larger powers conferred by the trust instrument relating to the settled land which by virtue of this Act operate and are exercisable as if conferred by this Act on a tenant for life;

(e) The name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement.

(2) The statements or particulars required by this section may be incorporated by reference to an existing vesting instrument, and, where there is a settlement subsisting at the commencement of this Act, by reference to that settlement and to any instrument whereby land has been conveyed to the uses or upon the trusts of that settlement, but not (save as last aforesaid) by reference to a trust instrument nor by reference to a disentailing deed.

(3) A principal vesting deed shall not be invalidated by reason only of any error in any of the statements or particulars by this Act required to be contained therein.

Subs. (1) and para. (c). "Subsistence of the settlement."

We have already seen (*k*) for what period a settlement is "deemed to be a subsisting settlement for the purposes of the Act," and who are "the trustees of the settlement" (*l*).

Subs. (1), para. (d). "Additional or other powers."

The reference here is to sect. 109 of the Act (*m*).

From sub-sect. (2) of that section it will be seen that the only additional or other powers which need be specified are those, if any, "relating to the settled land."

If it is clear that no such powers are conferred by the trust instrument, it may be advisable, though perhaps not necessary, to record that fact, *e.g.*, by stating in the vesting deed that "No additional or larger powers are conferred by the said settlement in relation to the settled land such as, if so conferred, would by virtue of the Settled Land Act, 1925, operate and be exercisable as if conferred by that Act on a tenant for life."

If the settlement *does* confer additional or further powers, but, as to all or some of them, it is doubtful whether they "relate to the settled land," the statement might be to the effect that "the only additional or larger powers, if any, in relation to the settled land which are conferred by the said settlement and by virtue of the Settled Land Act, 1925, operate

(*k*) S. L. Act, s. 3, above, Part IV., Chap. II.
(*l*) *Ibid.*, ss. 30, 31, above, Part IV., Chap. III.
(*m*) Above, Part IV., Chap. III., p. 270.

and are exercisable as if conferred by that Act on a tenant for life are the following [*or*, are those set forth in the Schedule hereto]."

Subs. (1), para. (e). Power to appoint new trustees.

It may well be that the instrument which constitutes, or, in the case of a compound settlement, the earliest in date or operation of the instruments, which together constitute the "trust instrument," does not expressly nominate any person as having the power to appoint new trustees, or that the person, if any, so nominated is dead. In such a case it is thought desirable to insert in the vesting deed a statement to the effect that "there is no person [*or, as the case may be*, no longer any person] expressly empowered to appoint new trustees of the settlement."

In the case of compound settlements.

It would seem that, in the case of a compound settlement, the person (if any) named in the earliest in date or operation of the instruments constituting the compound settlement will, if living, be the only person entitled by express nomination to appoint new trustees of the compound settlement; and further, that in any case a power expressly conferred on a living person by a constituent instrument, *subsequent* in date or operation, to appoint new trustees of *that* instrument, will not be exercisable unless and until *that* instrument becomes the only or earliest trust instrument.

Subs. (3). "Any error."

The effect of sub-sect. (3) appears to be that, provided that the vesting deed *purports* to contain the prescribed statements and particulars, it will not be invalidated by reason only of any *error* in such statements or particulars. For example, a vesting deed would not, it is thought, be invalidated by reason only that it contained an inaccurate or incomplete description of the land subject to the limitations or trusts of the settlement.

Limits of error.

There must, however, be substantial compliance with the requirements of the Act; for an instrument *inter vivos* intended to create a settlement of a legal estate in land which is executed after the commencement of the Act, and does not comply with the requirements of the Act with respect to the method of effecting such a settlement will operate only as a "trust instrument" (*n*), that is, a proper vesting deed will still be required to "give effect to" the settlement.

(*n*) See S. L. Act, s. 9 (1) (iii), below, p. 281.

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Examples of instruments.

Examples of instruments framed in accordance with the provisions of the Settled Land Act are contained in the First Schedule to that Act (*o*).

S. L. Act, s. 15 and 1st Sched.

Forms Nos. 2 and 3.

Forms Nos. 2 and 3 in this Schedule are examples respectively of a vesting deed and a trust instrument executed for the purpose of effecting a settlement on the marriage of John H. and Jane W. of freehold land of which John H. (the intended husband) is seised for an estate in fee simple absolute in possession (*p*).

Application of Forms Nos. 2 and 3.

It is thought that Forms Nos. 2 and 3, or forms to the like effect, are applicable only where, immediately before the execution of the vesting deed and the trust instrument, the land is unsettled land.

Vesting declaration by whom and in whose favour to be made.

In such a case the vesting declaration must be made by the person in whom the legal estate is vested, or, in other words, by the "estate owner" (*q*); and must be made in favour of the person who under the trust instrument will take the first beneficial interest in possession, or, if such person be not of full age, then in favour of the trustees of the settlement, as the "statutory owner."

Object of prescribed method of settling legal estates *inter vivos*.

The object of the method, as prescribed by sects. 4 and 5 of the Act, of settling a legal estate in land *inter vivos*, is to keep the beneficial interests, as declared by the trust instrument, off the title, and follows the analogy of the practice which has long prevailed whereby, where it was intended to effect a settlement of land by means of a trust for sale, the land was by one instrument conveyed to trustees upon trust for sale and to stand possessed of the net proceeds of sale and of the net rents and profits until sale upon the trusts declared by a separate instrument of even date, with the trusts of which a purchaser from the trustees for sale, having regard to the protection afforded him by sect. 10 (3) and (4) (*r*) of the Conveyancing Act, 1911, was in no way concerned (*s*).

(*o*) See S. L. Act, s. 15.

(*p*) That he is so seised appears to be implied in the form of the vesting deed, for the settlement must be of a *legal estate*.

(*q*) For the meaning of "estate owner" in the S. L. Act, see Table of Definitions, above, Part I., Chap. VII.

(*r*) Re-enacted by sect. 23 of the L. P. Act, above, Part. III., Chap. VII., p. 166.

(*s*) This method of settling land is preserved or revived, with

(b) *Trust Instruments.*

"Trust instrument."

It may be useful to emphasize here that in the Settled Land Act "trust instrument," as distinguished from "vesting deed," means "the instrument whereby the trusts of the settled land are declared, and includes any two or more such instruments, and a settlement or instrument which is deemed to be a trust instrument" (*t*).

"Two or more such instruments."

There will be "two or more such instruments" where, in order to ascertain the trusts affecting the settled land, and in particular what are the subsisting beneficial interests in the settled land, or the subsisting charges or powers of charging (*u*), it is necessary to have regard to the provisions of more than one instrument, *e.g.*, in the case of a compound settlement (*x*).

S. L. Act, s. 9.

What settlements or instruments are to be deemed to be trust instruments is defined by sect. 9 of the Act, which is as follows:—

Procedure in the case of settlements and of instruments deemed to be trust instruments.

9.—(1) Each of the following settlements or instruments shall for the purposes of this Act be deemed to be a trust instrument, and any reference to a trust instrument contained in this Act shall apply thereto, namely:—

(i) An instrument executed, or, in case of a will, coming into operation, after the commencement of this Act which by virtue of this Act is deemed to be a settlement;

(ii) A settlement which by virtue of this Act is deemed to have been made by any person after the commencement of this Act;

(iii) An instrument *inter vivos* intended to create a settlement of a legal estate in land which is executed after the commencement of this Act, and does not comply with the requirements of this Act with respect to the method of effecting such a settlement; and

(iv) A settlement made after the commencement of this Act (including a settlement by the will of a person who dies after such commencement) of any of the following interests—

(a) an equitable interest in land which is capable, when in possession, of subsisting at law; or

(b) an entailed interest; or

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further protective provisions, by the L. P. Act. See the Chapter on "Dispositions on Trust for Sale," above, Part III., Chap. VII.

(*t*) S. L. Act, s. 117 (1) (xxxi). See Table of Definitions, above, Part I., Chap. VII.

(*u*) See above, Part IV., Chap. II.

(*x*) See above, Part IV., Chap. I.

Part IV. Chap. IV.

(c) a base or determinable fee or any corresponding interest in leasehold land,

but only if and when the interest settled takes effect free from all equitable interests and powers under every prior settlement (if any).

(2) As soon as practicable after a settlement, or an instrument which for the purposes of this Act is deemed to be a trust instrument, takes effect as such, the trustees of the settlement may, and on the request of the tenant for life or statutory owner shall, execute a principal vesting deed, containing the proper statements and particulars, declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named, being the tenant for life or statutory owner, and including themselves if they are the statutory owners, and such deed shall, unless the legal estate is already so vested, operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid and, if more than one, as joint tenants.

(3) If there are no trustees of the settlement, then (in default of a person able and willing to appoint such trustees) an application under this Act shall be made to the court for the appointment of such trustees.

(4) The provisions of the last preceding section with reference to a conveyance shall apply, so far as they are applicable, to a principal vesting deed under this section.

Application of s. 9.

It will be seen that this section applies only to instruments or settlements executed or made, or deemed to have been made, or, in the case of a will, coming into operation *after* the commencement of the Act.

Subs. (1). para. (i).

Paragraph (i) of sub-sect. (1) of sect. 9 appears to refer to the definition of "settlement" in sect. 1 of the Act (*y*). The case of a settlement made by a will coming into operation after the commencement of the Act is specially dealt with by sect. 6 (*z*).

Ib. para. (ii).

An instance of a settlement which by virtue of the Act is deemed to have been made by any person after the commencement of the Act is afforded by the settlement "deemed to have been made by the intestate, or by the person whose interest the infant has acquired," as provided in sub-sect. (2) of sect. 1 of the Act (*y*).

Ib. para. (iv).

Paragraph (iv) introduces the first mention in the Act of settlements of "equitable interests." Such a settlement, it

(*y*) Above, Part IV., Chap. II., p. 258. (*z*) Below, p. 283.

will be seen, operates as a "trust instrument," only if and when the interest settled takes effect free from all equitable interests and powers under any prior settlement (if any).

Ib. sub-para. (a).

An example of an interest under sub-paragraph (a) would be an interest in fee simple *in remainder* (*a*).

(c) *Settlements by Will.*

S. L. Act, s. 6.

Sect. 6 of the Act provides as follows:—

Procedure in the case of settlements by will.

6. Where a settlement is created by the will of an estate owner who dies after the commencement of this Act—

(a) the will is for the purposes of this Act a trust instrument; and

(b) the personal representatives of the testator shall hold the settled land on trust, if and when required so to do, to convey it to the person who, under the will, or by virtue of this Act, is the tenant for life or statutory owner, and, if more than one, as joint tenants.

"Estate owner."

The reference to "estate owner" (*b*) in this section necessarily implies that the settlement contemplated by the section is a settlement of land in which the testator had a "legal estate" (*b*) at the time of his death. Moreover, it must be land which at the time of his death was *unsettled land*, as otherwise a settlement of a "legal estate" could not have been "created" by his will.

"Personal representatives."

Such land will, on his death, vest in his personal representatives, as being "real estate" to which he was entitled "for an interest not ceasing on his death" (*c*).

"Trust instrument."

As the will is for the purposes of the Act a "trust instrument," there must, in order to make the settlement *effective*, be a principal vesting deed; and accordingly it is provided (*d*) that the conveyance under this section shall, if by deed, be a "principal vesting deed" (*e*), and if by an assent, be a "vesting assent," which shall contain the like statements and particulars as are required by the Act in the case of a principal vesting deed (*e*).

"Convey."

(*a*) See above, Part III., Chap. I., p. 99.
(*b*) See Table of Definitions, above, Part I., Chap. VII.
(*c*) See A. E. Act, ss. 1, 3, below, Part VII.
(*d*) By S. L. Act, s. 8 (4), below, p. 287.
(*e*) See S. L. Act, s. 5, above, p. 277.

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(d) *Change of Ownership.*

S. L. Act, s. 7. Vesting deed on change of ownership.

Whenever, by reason of death or for any other reason, the person who is for the time being the tenant for life (*f*) or statutory owner (*g*) ceases to be such, and the land remains settled land, the legal estate in the settled land must be vested in the person who on such cesser becomes the tenant for life or statutory owner, and for this purpose a "principal vesting deed" or "vesting assent" must be executed.

Provision for such change is made by the following section of the Act:—

Procedure on change of ownership.

7.—(1) If, on the death of a tenant for life or statutory owner, or of the survivor of two or more tenants for life or statutory owners, in whom the settled land was vested, the land remains settled land, his personal representatives shall hold the settled land on trust, if and when required so to do, to convey it to the person who under the trust instrument or by virtue of this Act becomes the tenant for life or statutory owner and, if more than one, as joint tenants.

(2) If a person by reason of attaining full age becomes a tenant for life for the purposes of this Act of settled land, he shall be entitled to require the trustees of the settlement, personal representatives, or other persons in whom the settled land is vested, to convey the land to him.

(3) If a person who, when of full age, will together with another person or other persons constitute the tenant for life for the purposes of this Act of settled land attains that age, he shall be entitled to require the tenant for life, trustees of the settlement, personal representatives or other persons in whom the settled land is vested to convey the land to him and the other person or persons who together with him constitute the tenant for life as joint tenants.

(4) If by reason of forfeiture, surrender, or otherwise the estate owner of any settled land ceases to have the statutory powers of a tenant for life and the land remains settled land, he shall be bound forthwith to convey the settled land to the person who under the trust instrument, or by virtue of this Act, becomes the tenant for life or statutory owner and, if more than one, as joint tenants.

(5) If any person of full age becomes absolutely entitled to the settled land (whether beneficially, or as personal representative, or as trustee for sale, or otherwise) free from all limitations, powers, and charges taking effect under the settlement, he shall be entitled to require the trustees of the settlement, personal representatives, or other persons in whom the settled land is vested, to convey the land to him, and if more persons than one being of full age become

(*f*) See above, Part IV., Chapter II.
(*g*) See above, Part IV., Chapter I.

so entitled to the settled land they shall be entitled to require such persons as aforesaid to convey the land to them as joint tenants.

Application of s. 7.

This section provides for the conveyance (*h*) of the settled land (*i*) to a person not previously entitled who, in the various cases therein specified, *becomes* entitled to have the same conveyed (*h*) to him.

Subs. (1). Death of tenant for life, &c.

Sub-sect. (1) deals with the case of the death of a tenant for life or statutory owner, or of the survivor of two or more tenants for life or statutory owners, *in whom the settled land* (*i*) *was vested*. If it was not so vested, the sub-section does not apply (*k*).

Personal representatives.

All land, whether freehold or leasehold, to which a deceased person was entitled for an interest not ceasing on his death, including land held on trust (including settled land) or by way of mortgage or security, vests on his death in his personal representatives (*l*); and under this sub-section it will be their duty in the case of settled land so vested to convey it, if and when required so to do, to the person who, under the trust instrument or by virtue of the Act becomes, by reason of the death, the tenant for life or statutory owner, and if more than one, as joint tenants.

Subss. (2) and (3). Majority.

During the minority of a person who, if of full age would have been sole tenant for life, the settled land will, as a general rule, be vested in the statutory owner (*m*), that is, the trustees of the settlement.

Subs. (4). Forfeiture, &c.

In this sub-section "surrender" no doubt refers to an assurance which has the effect of extinguishing the beneficial interest of the tenant for life in favour of a remainderman (*n*).

Subs. (5). Absolute owner.

Sub-sects. (1) to (4) of sect. 7 contemplate events upon the happening of which the land *remains* settled land. Sub-

(*h*) For the meanings of "conveyance" and "convey" in the S. L. Act, see Table of Definitions, above, Part I., Chapter VII.

(*i*) That is, the "legal estate" in the land which is the subject of the settlement.

(*k*) In most cases the settled land will be so vested, as it ought to be; and, if it is not, this will be due probably to the neglect or omission to execute a proper vesting deed.

(*l*) See A. E. Act, ss. 1 and 3, below, Part VII.

(*m*) See above, Part IV., Chapter I.

(*n*) See S. L. Act, s. 105, below, Part IX., Section IX.

Part IV. Chap. IV.

sect. (5) refers to an event, namely, that of any person of full age becoming absolutely entitled as therein mentioned, which puts an end to the settlement. In such a case there will have to be a deed of discharge (*o*).

(e) *Vesting Assents.*

S. L. Act, s. 8.

Sect. 8 of the Act is concerned mainly with the mode in which, and the conditions under which, settled land is to be conveyed, where the conveyance is made by personal representatives under sect. 6 or sect. 7 of the Act. As will be seen, such conveyance may be effected either by a principal vesting deed or by a vesting assent.

"Vesting assent."

"Vesting assent" is defined in the Settled Land Act (*p*) as meaning "the instrument whereby a personal representative, after the death of a tenant for life or statutory owner, or the survivor of two or more tenants for life or statutory owners, vests settled land in a person entitled as tenant for life or statutory owner."

Definition, *qy.* wide enough.

The definition does not appear to be wide enough, for a conveyance under sect. 6 (*q*) may be effected by a vesting assent, that is, on the death of a person who was an *absolute* owner.

Sect. 8 is as follows:—

Mode and costs of conveyance, and saving of rights of personal representatives and equitable chargees.

8.—(1) A conveyance by personal representatives under either of the last two preceding sections may be made by an assent in writing signed by them which shall operate as a conveyance.

(2) Every conveyance under either of the last two preceding sections shall be made at the cost of the trust estate.

(3) The obligations to convey settled land imposed by the last two preceding sections are subject and without prejudice—

(a) where the settlement is created by a will, to the rights and powers of the personal representatives for purposes of administration; and

(b) in any case, to the person on whom the obligation is imposed being satisfied that provision has been or will be made for the payment of any unpaid death duties in respect of the

(*o*) See S. L. Act, s. 17, below, p. 304.
(*p*) See Table of Definitions, above, Part I., Chap. VII.
(*q*) Above, p. 283.

land or any interest therein for which he is accountable, and any interest and costs in respect of such duties, or that he is otherwise effectually indemnified against such duties, interest and costs.

(4) Where the land is or remains settled land a conveyance under either of the last two preceding sections shall—

(a) if by deed, be a principal vesting deed; and

(b) if by an assent, be a vesting assent, which shall contain the like statements and particulars as are required by this Act in the case of a principal vesting deed.

(5) Nothing contained in either of the last two preceding sections affects the right of personal representatives to transfer or create such legal estates to take effect in priority to a conveyance under either of those sections as may be required for giving effect to the obligations imposed on them by statute.

(6) A conveyance under either of the last two preceding sections, if made by deed, may contain a reservation to the person conveying of a term of years absolute in the land conveyed, upon trusts for indemnifying him against any unpaid death duties in respect of the land conveyed or any interest therein, and any interest and costs in respect of such duties.

(7) Nothing contained in either of the last two preceding sections affects any right which a person entitled to an equitable charge for securing money actually raised, and affecting the whole estate the subject of the settlement, may have to require effect to be given thereto by a legal mortgage, before the execution of a conveyance under either of those sections.

Subs. (1). Assent in writing.

It will be noticed that an assent, in order to operate as a conveyance, need only be in writing signed by the personal representative (*r*).

Subs. 3 (a). Settlement created by will.

The reference here is to sect. 6 of the Act (*s*), and confirms the view expressed above that that section applies only to a settlement by will of *unsettled* land. Being unsettled land, it would be liable in a due course of administration for the funeral and testamentary expenses and debts of the testator; whereas settled land, which was such at the time of his death, would be liable only for the death duties payable on his death.

Subs. 3 (b). Death duties.

The subject of death duties, as affected by the Consolidation Acts, or any of them, is considered hereafter in connection

(*r*) As to assents or conveyances by personal representatives, see further, sect. 36 of the A. E. Act, below, Part IX., Section VII.

(*s*) Above, p. 283.

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with the chapter of the Treatise which treats "Of the Death Duties" (*t*).

Subs. 4 (b). Form of vesting assent. (S. L. Act, 1st Sched., Form No. 5).

A form of "Vesting Assent by Personal Representative" is given in Form No. 5 in the First Schedule to the Act.

Clause 1. Estate to be vested. Is a *legal estate*.

A vesting instrument (*u*), whether it takes the form of a vesting deed or vesting assent, is intended to affect only a *legal estate*. In the case of a vesting assent, the legal estate affected will, if the land was unsettled land settled by the will of the testator whose personal representatives execute the assent, be the legal estate of which he was the beneficial owner at the time of his death; and if the land was settled land at the time of the deceased's death, whether he died testate or intestate, will be the legal estate the subject of the settlement under which the deceased was the tenant for life or statutory owner at the time of his death. It is suggested, therefore, that it is better to define the estate for which the land is to vest by using the words "for an estate in fee simple," or, in the case of leasehold land, the words "for all the residue unexpired of the term of —— years from the —— day of ——, for which the premises are held under a lease dated, &c. and made between, &c."

Clause 2. Trust instrument.

The settlement to be referred to in clause 2 will be the instrument, or in the case of a compound settlement (*x*) each and every instrument, which is a "subsisting settlement for the purposes of the Act" (*x*). Where there is a compound settlement, it may be convenient to define it by reference to a schedule, as thus:—"By a compound settlement constituted by all or some of the instruments specified in the —— Schedule hereto," care being taken to include in such schedule the earliest in date or operation of the several "subsisting settlements."

Clause 3. Trustees of the settlement.

We have already seen (*y*) who are "the trustees of the settlement," and in particular who are such trustees where a compound settlement is "the settlement."

(*t*) Below, Part IX., Section XXI.
(*u*) See Table of Definitions, above, Part I., Chap. VII.
(*x*) Above, Part IV., Chap. II.
(*y*) Above, Part IV., Chap. III.

Section iii.—*Existing Settlements.*

Definition.

We have seen (*z*) that in the Settled Land Act "a settlement subsisting at the commencement of this Act" includes a settlement created by virtue of the Act immediately on the commencement of the Act, and accordingly that land unsettled immediately before the commencement of the Act may, immediately upon such commencement, become settled land; *e.g.*, land sold and conveyed subject to, but indemnified against, a family rentcharge which the vendor is unable to overreach.

Transitional Provisions, S. L. Act, 2nd Sched.

The Second Schedule to the Act contains "Transitional Provisions affecting Existing Settlements." These provisions are divided into three paragraphs.

Division into paragraphs.

Paragraph 1.

Paragraph 1 is divided into eight sub-paragraphs containing "Provisions for vesting legal estate in Tenant for Life or Statutory Owner."

Automatic vesting.

We have seen (*a*) that where, immediately after the commencement of the Act, there is a tenant for life or statutory owner, the legal estate in the settled land will vest automatically in him by virtue of paragraphs 3, 5 and 6 (c) of Part II. of the First Schedule to the Property Act.

Does not dispense with vesting deed.

From the provisions now to be considered it will be seen that such vesting does not dispense with the necessity for the due execution of a vesting deed.

Application of paragraph 1.

Paragraph 1 does not apply where, at the commencement of the Act, settled land is held at law or in equity in undivided shares vested in possession (*b*); nor where settled land is vested in personal representatives at the commencement of the Act, or where settled land becomes vested in personal representatives before a principal vesting deed has been executed pursuant to paragraph 1 (*c*).

(*z*) Above, Part IV., Chap. II.
(*a*) Above, Part III., Chapter II., pp. 107 *et seq.*
(*b*) Para. 1 (5). As to undivided shares so vested, see L. P. Act, First Schedule, Part IV., para. 1; above, Part III., Chap. V., Section ii., pp. 151 *et seq.*
(*c*) Para. 1 (7). As to personal representatives, see para. 2, below, p. 291.

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Paragraph 1, except (5) and (7), set out.

Section 37.

Paragraph 1, omitting sub-paragraphs (5) and (7) (*d*), but including the heading to that paragraph as appearing in the Act, is as follows:—

SECOND SCHEDULE.

TRANSITIONAL PROVISIONS AFFECTING EXISTING SETTLEMENTS.

Paragraph 1.

PROVISIONS FOR VESTING LEGAL ESTATE IN TENANT FOR LIFE OR STATUTORY OWNER.

1.—(1) A settlement subsisting at the commencement of this Act is, for the purposes of this Act, a trust instrument.

(2) As soon as practicable after the commencement of this Act, the trustees for the purposes of this Act of every settlement of land subsisting at the commencement of this Act (whether or not the settled land is already vested in them), may and on the request of the tenant for life or statutory owner, shall at the cost of the trust estate, execute a principal vesting deed (containing the proper statements and particulars) declaring that the legal estate in the settled land shall vest or is vested in the person or persons therein named (being the tenant for life or statutory owner, and including themselves if they are the statutory owners), and such deed shall (unless the legal estate is already so vested) operate to convey or vest the legal estate in the settled land to or in the person or persons aforesaid and, if more than one, as joint tenants.

(3) If there are no trustees of the settlement then (in default of a person able and willing to appoint such trustees), an application shall be made to the Court by the tenant for life or statutory owner, or by any other person interested, for the appointment of such trustees.

(4) If default is made in the execution of any such principal vesting deed, the provisions of this Act relating to vesting orders of settled land shall apply in like manner as if the trustees of the settlement were persons in whom the settled land is wrongly vested.

* * * *

(6) In the case of settlements subsisting at the commencement of this Act, all the estates, interests and powers thereby limited which are not by statute otherwise converted into equitable interests or powers, shall, as from the date of the principal vesting deed or the vesting order, take effect only in equity.

* * * *

(8) No ad valorem stamp duty shall be payable in respect of a vesting deed or order made for giving effect to an existing settlement.

Sub-para. (1). Definitions.

The definitions of "a settlement subsisting at the commencement of this Act" (*e*) and of "trust instrument" (*e*) have

(*d*) See notes (*b*) and (*c*), above.
(*e*) See Table of Definitions, above, Part I., Chapter VII.

already been considered (*f*); and we have also seen what settlements and instruments are for the purposes of the Act to be deemed to be trust instruments (*g*).

Sub-para. (2). "Principal vesting deed."

Sect. 5 of the Act (*h*) defines "principal vesting deed," and prescribes what statements and particulars are to be contained therein.

Form of deed. (S. L. Act, 1st Sched., Form No. 1.)

A form of "Vesting Deed for giving effect to a Settlement subsisting at the commencement of this Act" is provided by Form No. 1 in the First Schedule to the Act.

Subs. (3). Application to the Court.

Application to the Court for the appointment of trustees will be made under sect. 34 of the Act (*i*).

Subs. (4). Vesting orders.

The reference in sub-sect. (4) to the provisions of the Act relating to vesting orders of settled land is to sect. 12 of the Act (*k*).

Subs. (6). "Not otherwise converted."

The reference in sub-paragraph (6) to estates, &c. not by statute otherwise converted, &c. is to Part I. of the First Schedule of the Property Act relating to "Conversion of certain existing Legal Estates into Equitable Interests" (*l*).

S. L. Act, 2nd Sched., paragraph 2.

Paragraph 2 of the Second Schedule deals with the case of personal representatives excepted from paragraph 1 by sub-paragraph (7) of the latter paragraph (*m*).

Paragraph 2 is as follows:—

Paragraph 2.

PROVISIONS WHERE SETTLED LAND IS AT COMMENCEMENT OF ACT VESTED IN PERSONAL REPRESENTATIVES.

2.—(1) Where settled land remains at the commencement of this Act vested in the personal representatives of a person who dies before such commencement, or becomes vested in personal representatives before a principal vesting deed has been executed pursuant to the last preceding paragraph, the personal representatives shall hold the

(*f*) Above, pp. 261 *et seq.*, and p. 281.
(*g*) Above, pp. 281 *et seq.*
(*h*) Above, p. 277.
(*i*) Above, p. 273.
(*k*) Below, p. 300.
(*l*) Above, Part III., Chap. I., p. 99.
(*m*) See above, p. 289, n. (*c*), and the passage to which that note refers.

settled land on trust, if and when required so to do, to convey the same to the person who, under the trust instrument, or by virtue of this Act, is the tenant for life or statutory owner and, if more than one, as joint tenants.

(2) A conveyance under this paragraph shall be made at the cost of the trust estate and may be made by an assent in writing signed by the personal representatives which shall operate as a conveyance. No stamp duty is payable in respect of a vesting assent.

(3) The obligation to convey settled land imposed on the personal representatives by this paragraph is subject and without prejudice—

(a) to their rights and powers for purposes of administration, and

(b) to their being satisfied that provision has been or will be made for the payment of any unpaid death duties in respect of the land or any interest therein for which they are accountable, and any interest and costs in respect of such duties, or that they are otherwise effectually indemnified against such duties, interest and costs.

(4) A conveyance under this paragraph shall—

(a) if by deed, be a principal vesting deed, and

(b) if by an assent, be a vesting assent, which shall contain the like statements and particulars as are required by this Act in the case of a principal vesting deed.

(5) Nothing contained in this paragraph affects the rights of personal representatives to transfer or create such legal estates to take effect in priority to a conveyance under this paragraph as may be required for giving effect to the obligations imposed on them by statute.

(6) A conveyance by personal representatives under this paragraph, if made by deed, may contain a reservation to themselves of a term of years absolute in the land conveyed upon trusts for indemnifying them against any unpaid death duties in respect of the land conveyed or any interest therein, and any interest and costs in respect of such duties.

(7) Nothing contained in this paragraph affects any right which a person entitled to an equitable charge for securing money actually raised, and affecting the whole estate the subject of the settlement, may have to require effect to be given thereto by a legal mortgage, before the execution of a conveyance under this section.

Application of sub-para. (1). *Semble*, applies only to land settled by will of testator dying before 1926.

It is thought that sub-paragraph (1) of this paragraph applies only to the case of land settled by the will of a testator who died before the commencement of the Act. In such a case the law governing the devolution of the land on the death of the testator would be the law in force *before* the commencement of the Administration Act (*n*), namely, Part I. of the Land

(*n*) See above, Part I., Chapter III., pp. 15, 16.

Transfer Act, 1897. Under that part of that Act, on the grant, *before* the commencement of the Settled Land Act, of probate to his executors, or of administration to administrators with the will annexed, the settled land would vest in the personal representatives so constituted, and would *remain* so vested at the commencement of the Act, unless in the meantime they had given effect to the settlement by an assent or conveyance. If such probate or administration were granted *after* the commencement of the Act, it would *become* vested in the personal representatives and, as it is thought, *necessarily* before a principal vesting deed had been executed pursuant to paragraph 1.

Sub-paras. (2) to (7).

The remaining sub-paragraphs of paragraph 2 are merely consequential on sub-paragraph (1), and apply indifferently to both the cases mentioned in the latter. It will be noticed that these sub-paragraphs reproduce in substance sect. 8 of the Act (*o*); *except* that sub-paragraph (3) (a), which saves the rights and powers of the personal representatives for purposes of administration, applies to *every* case under paragraph 2, whereas the corresponding sub-sect. (3) (a) of sect. 8 applies only "where the settlement is created by a will." This difference supports the view that paragraph 2 applies only to land which at the death of the deceased was *unsettled* land and first settled by his will, and liable accordingly to his funeral and testamentary expenses and debts in a due course of administration.

Form of assent.

It is thought that the form of "Vesting Assent by Personal Representative," being Form No. 5 in the First Schedule to the Act (*p*), will be applicable to a vesting assent under paragraph 2.

S. L. Act, 2nd Sched., Para. 3.

Paragraph 3 of the Second Schedule to the Act contains "Provisions as to Infants," which are as follows:—

Paragraph 3.

PROVISIONS AS TO INFANTS.

3.—(1) Where, at the commencement of this Act, an infant is beneficially entitled to land in possession for an estate in fee simple or for a term of years absolute, or would, if of full age, be a tenant for life or have the powers of a tenant for life, the settled land shall, by

(*o*) Above, p. 286.

(*p*) Above, p. 288.

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virtue of this Act, vest in the trustees (if any) of the settlement upon such trusts as may be requisite for giving effect to the rights of the infant and other persons (if any) interested:

Provided that, if there are no such trustees, then—

(i) Pending their appointment, the settled land shall, by virtue of this Act, vest in the Public Trustee upon the trusts aforesaid:

(ii) The Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner unless and until requested in writing to act on behalf of the infant by his parents or parent or testamentary or other guardian in the order named:

(iii) After the Public Trustee has been so requested to act, and has accepted the trust, he shall become the trustee of the settlement, and no trustee shall (except by an order of the Court) be appointed in his place without his consent:

(iv) If there is no other person able and willing to appoint trustees the parents or parent or testamentary or other guardian of the infant, if respectively able and willing to act, shall (in the order named) have power by deed to appoint trustees of the settlement in place of the Public Trustee in like manner as if the Public Trustee had refused to act in the trust, and to vest the settled land in them on the trusts aforesaid, and the provisions of the Trustee Act, 1925, relating to the appointment of new trustees, and the vesting of trust property shall apply as if the persons aforesaid (in the order named) had been nominated by the settlement for the purpose of appointing new trustees thereof; and in default of any such appointment the infant by his next friend, may, at any time during the minority, apply to the Court for the appointment of trustees of the settlement, and the Court may make such order as it thinks fit, and if thereby trustees of the settlement are appointed, the settled land shall, by virtue of this Act, vest in the trustees as joint tenants upon the trusts aforesaid:

Provided that in favour of a purchaser a statement in the deed of appointment that the father or mother or both are dead or are unable or unwilling to make the appointment shall be conclusive evidence of the fact stated.

(v) If land to which an infant is beneficially entitled in possession for an estate in fee simple or for a term of years absolute vests in the Public Trustee, but the Public Trustee does not become the trustee of the settlement, and trustees of the settlement are not appointed in his place, then, if and when the infant attains the age of twenty-one years, the land shall vest in him.

(2) The provisions of this paragraph shall extend to the legal estate in the settled land, except where such legal estate is, at or immediately after the commencement of this Act, vested in personal representatives,

in which case this paragraph shall have effect without prejudice to the provisions of paragraph two of this Schedule.

(3) Where, at the commencement of this Act, any persons appointed under section sixty of the Settled Land Act, 1882, have power to act generally or for any specific purpose on behalf of an infant, then those persons shall, by virtue of this Act, become and be the trustees of the settlement.

(4) Notwithstanding that the settled land is by virtue of this paragraph vested in the trustees of the settlement, they shall, at the cost of the trust estate, in accordance with this Act, execute a principal vesting deed declaring that the settled land is vested in them.

(5) This paragraph does not apply where an infant is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute jointly with a person of full age (for which case provision is made in the Law of Property Act, 1925), but it applies to two or more infants entitled as aforesaid jointly.

(6) This paragraph does not apply where an infant would, if of full age, constitute the tenant for life or have the powers of a tenant for life together with another person of full age, but it applies to two or more infants who would, if all of them were of full age, together constitute the tenant for life or have the powers of a tenant for life.

Sub-para. (1) (iv) T. Act.

The provisions of the Trustee Act, referred to in sub-paragraph (1) (iv), will be considered hereafter (*q*).

Sub-para. (3) S. L. Act, 1882, s. 60.

Sect. 60 of the Settled Land Act, 1882, is repealed (*r*) and not re-enacted.

Sub-para. (5).

The reference in sub-paragraph (5) to the Property Act is to Part III. of the First Schedule to that Act (*s*).

Section iv.—*Other Provisions of Part I. of the Act.*

S. L. Act, Part I. Subject matter.

Part I. of the Settled Land Act is headed "General Preliminary Provisions," and comprises sects. 1 to 37, of which only those referred to in this section of this chapter remain to be considered.

(a) *Subsidiary Vesting Deeds.*

S. L. Act, s. 10. "Procedure on acquisition of land to be made subject to a settlement."

The subject of subsidiary vesting deeds is dealt with in sect. 10 of the Act, which section contains five sub-sections.

(*q*) Below, Part V.
(*r*) See above, Part I., Chapter III., p. 18.
(*s*) See "Case II.," above, Part III., Chapter VIII., p. 176.

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Sub-sect. (1) of sect. 10, apart from the proviso to that sub-section, enacts as follows:—

Subs. (1). Cases where subsidiary vesting deed required.

10.—(1) Where after the commencement of this Act land is acquired with capital money arising under this Act or in exchange for settled land, or a rentcharge is reserved on a grant of settled land, the land shall be conveyed to, and the rentcharge shall by virtue of this Act become vested in, the tenant for life or statutory owner, and such conveyance or grant is in this Act referred to as a subsidiary vesting deed:

(1) Land acquired with capital money or in exchange.

(2) Rentcharge reserved.

It will be seen that this sub-section provides for two cases in which a "subsidiary vesting deed" (*t*) is required, namely, (1) where, after the commencement of the Act, land is acquired with capital money arising under the Act or in exchange for settled land, and (2) where, after such commencement, a rentcharge is reserved on a grant of settled land. In the former case the land is to be conveyed to, and in the latter case the rentcharge will, *by virtue of the Act*, become vested in, the tenant for life or statutory owner; and it is such conveyance or grant which is in the Act referred to as a "subsidiary vesting deed."

Power to reserve a rentcharge.

Under the repealed Acts the tenant for life was bound, as a rule, to sell for money (*u*), and only in exceptional cases (*u*) could the consideration on the grant of settled land take the form of a rentcharge (*x*). The new Act confers a general power to sell wholly or partially in consideration of a perpetual rent or a terminable rent (*y*).

Subss. (2) to (5).

Sub-sects. (2) to (5) of sect. 10 are as follows:—

Form and effect of subsidiary vesting deed.

(2) A subsidiary vesting deed executed on the acquisition of land to be made subject to a settlement shall contain the following statements and particulars, namely—

(a) particulars of the last or only principal vesting instrument affecting land subject to the settlement;

(*t*) There is in the S. L. Act no definition of "subsidiary vesting deed" other than that contained in this sub-section. See Table of Definitions, No. 132, above, Part I., Chapter VII., p. 52.

(*u*) See Treatise, Vol. I., Chap. IX., p. 311, and n. (*r*); and see below, Part IX., Section IX.

(*x*) In the L. P. Act (see Table of Definitions, above, Part I., Chapter VII.) "rentcharge" includes a fee farm rent. The S. L. Act contains no definition of "rentcharge."

(*y*) S. L. Act, s. 39, below, Part IV., Chapter V., p. 312.

(b) a statement that the land conveyed is to be held upon and subject to the same trusts and powers as the land comprised in such last or only principal vesting instrument;

(c) the names of the persons who are the trustees of the settlement;

(d) the name of any person for the time being entitled to appoint new trustees of the settlement.

(3) A subsidiary vesting deed reserving a rentcharge on a grant of settled land shall contain the following statements and particulars—

(a) a statement that the rentcharge is vested in the grantor and is subject to the settlement which, immediately before the grant, was subsisting with respect to the land out of which it was reserved;

(b) particulars of the last or only principal vesting instrument affecting such land.

(4) A subsidiary vesting deed shall not be invalidated by reason only of any error in any of the statements or particulars by this Act required to be contained therein.

(5) The acquisition of the land shall not operate to increase or multiply charges or powers of charging.

Form of subsidiary vesting deed.

A form of "Subsidiary Vesting Deed on Sale when the Land is Purchased with Capital Money," is Form No. 4 in the First Schedule to the Act.

Proviso to subs. (1).

When principal vesting deed required.

The proviso to sub-sect. (1) of sect. 10 deals with the case where (1) an instrument is "subsisting" (*z*) *at* the commencement of the Act, or is made or comes into operation *after* such commencement, by virtue of which any money or securities are liable under the new Act, or the repealed Acts, or under a trust or direction contained in the instrument, to be invested in the purchase of land to be conveyed so as to become settled land, but (2) *at* the commencement of the Act, or when such instrument is made or comes into operation *after* such commencement, there is no land in respect of which a "principal vesting deed" (*a*) is capable of being executed. In such a case the *first* deed after the commencement of the Act by which any land is acquired as aforesaid shall be a "principal vesting deed" (*a*), and shall be framed accordingly.

The reason for this is that the Settled Land Act only deals with settlements of "land," and that capital money is not

(*z*) See S. L. Act, s. 3, above, Part IV., Chapter II., p. 261.
(*a*) See S. L. Act, s. 5, above, Part IV., Chapter IV., p. 277.

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"land" within the meaning of the Act (*b*). At the same time, money which is directed to be invested in the purchase of land to be conveyed so as to become settled land is, in equity and also within the meaning of the Act, "land" to the extent that it devolves as such (*c*).

Money settled by reference to capital money.

Change in the law.

In re Walker.

It will be convenient to mention here a change in the law relating to the devolution of money settled "by reference to" capital money arising under the new Act or the repealed Acts. In *In re Walker*, (1908) 2 Ch. 705, it was held that a mere direction in a settlement of money to be invested in land that the money should be held and applied as capital money arising under the Settled Land Acts from settled land did not operate as an equitable conversion of the money into land, unless a clause were added expressly directing an investment in the purchase of land, and that, in the absence of such a clause, the money devolves as money. The grounds of this decision were that under the repealed Acts there were alternative modes of applying or investing capital money (*d*), not necessarily involving its investment in land to be settled to the uses or upon the trusts of the settled land; and that, though a statute may impress capital money with the quality of land, independently of the mode of its application, a private individual cannot do so, except by the use of words apt to convert it into land in equity.

S. L. A. s. 78.

The change is effected by sect. 78 of the Act, which is as follows:—

Provision as to personal estate settled by reference to capital money, or on trusts corresponding with the limitations of land.

78.—(1) Where money or securities or the proceeds of sale of any property is or are by any instrument coming into operation either before or after the commencement of this Act directed to be held on trusts declared by reference to capital money arising under this Act from land settled by that instrument or any other instrument, the money, securities or proceeds shall be held on the like trusts as if the

(*b*) See *In re Clayton's Settled Estates*, (1926) Ch. 279, where it was also held that it is not necessary that the whole of the settled land should be comprised in one single principal vesting deed, but that different parcels of the settled land may be comprised in separate deeds.

(*c*) See S. L. Act, s. 75 (5), replacing S. L. Act, 1882, s. 22 (5); below, Part IV., Chapter VI.

(*d*) As there are under the new Act; see S. L. Act, s. 73, below, Part IV., Chapter VI.; replacing, with amendments, sect. 21 of the S. L. Act, 1882.

same had been or represented money which had actually arisen under this Act from the settled land.

(2) Where money or securities or the proceeds of sale of any property is or are by any instrument coming into operation after the commencement of this Act directed to be held on the same trusts as, or on trusts corresponding as nearly as may be with the limitations of land settled by that instrument or any other instrument, the money, securities or proceeds shall be held on the like trusts as if the same had been or represented capital money arising under this Act from the settled land.

(3) Such money, securities, or proceeds of sale shall be paid or transferred to or retained by the trustees of the settlement of the settled land, or paid or transferred into Court, and invested or applied accordingly.

(4) Where the settled land includes freehold land, the money, securities, or proceeds of sale aforesaid shall be held on the like trusts as if the same had been or represented capital money arising from the freehold land.

(5) This section has effect notwithstanding any direction in the instrument creating the trust that the trust property is not to vest absolutely in any tenant in tail or in tail male or in tail female under the limitations of the settled land who dies under a specified age, or before the happening of a specified event, but, save as aforesaid, has effect with any variations and subject to any contrary intention expressed in the instrument creating the trust.

Subs. (1).

It will be seen that the change is effected by sub-sect. (1) and is *retrospective*. Though the section does not expressly save rights acquired before the Act by virtue of any judgment or decision, these are saved by the repeal section of the Act (*e*).

Retrospective operation.

Saving of rights.

"Capital money."

In the Settled Land Act "capital money arising under this Act" means "capital money arising under the powers and provisions of this Act or the Acts replaced by this Act, and receivable for the trusts and purposes of the settlement, and includes securities representing capital money" (*f*); and "securities" include stocks, funds and shares (*f*).

(b) *Contracts for Settlements.*

S. L. Act, s. 11.

"As to contracts for the settlement of land."

Sect. 11 of the Act provides, by sub-sect. (1), that a contract made or other liability created or arising *after* the commencement of the Act for the settlement of land (i) by or on the part

(*e*) Above, Part I., Chapter III., pp. 10, 11.
(*f*) See Table of Definitions, above, Part I., Chapter VII.

Part IV. Chap. IV.

of an estate owner (*g*); or (ii) by a person entitled to certain equitable interests (*h*), shall be deemed an "estate contract" within the meaning of the Land Charges Act (*i*), and may be registered as a land charge accordingly, and effect shall be given thereto by a vesting deed and a trust instrument in accordance with the Act (*k*); and, by sub-sect. (2), that a contract or other liability created or arising *before* the commencement of the Act to make a settlement of land shall be deemed to be sufficiently complied with if effect is given thereto by a vesting deed and a trust instrument in accordance with the Act (*k*).

Application of subs. (2).

It is thought that sub-sect. (2) can apply only where the settlement to be made is of such an interest in land as is capable, after the commencement of the Act, of subsisting as a "legal estate." For example, if the interest to be settled were, before the Act, an interest in fee simple *in remainder*, and continued to be such at the commencement of the Act, the liability to give effect to the contract "by a vesting deed and a trust instrument" could not, it is thought, arise, unless and until the interest fell into possession and the owner thereof became either an "estate owner" or a "tenant for life." Meanwhile the settlement would, no doubt, take effect in equity and bind the interest either in the land or in the proceeds of the sale thereof, if the interest were overreached by a sale of the legal estate in the land.

Example.

"Estate contract."

A contract for the settlement of such an interest in remainder could not, while it is in remainder, be registered as an "estate contract," which applies only to legal estates (*l*).

(c) *Vesting Orders.*

S. L. Act, s. 12.

Sect. 12 of the Act enacts as follows:—

Power to make vesting orders as to settled land.

12.—(1) If—

(a) any person who is bound under this Part of this Act to execute a conveyance, vesting deed or vesting assent or in whom settled land is wrongly vested refuses or neglects to

(*g*) That is, for the settlement of a "legal estate" in land.
(*h*) Being the same as those specified in para. (iv) of sect. 9 (1) of the Act, above, p. 281, and subject to the same condition as therein mentioned.
(*i*) Below, Part VI.
(*k*) See S. L. Act, s. 4, above, p. 277.
(*l*) See L. C. Act, s. 10 (v), Class C (iv), below, Part VI.

execute the requisite conveyance, vesting deed or vesting assent within one month after demand in writing; or

(b) any such person is outside the United Kingdom, or cannot be found, or it is not known whether he is alive or dead; or

(c) for any reason the Court is satisfied that the conveyance, vesting deed or vesting assent cannot be executed, or cannot be executed without undue delay or expense;

the Court may, on the application of any person interested, make an order vesting the settled land in the tenant for life or statutory owner or person, if any, of full age absolutely entitled (whether beneficially or as personal representative or trustee for sale or otherwise), and, if the land remains settled land, the provisions of this Act relating to a principal vesting deed or a subsidiary vesting deed, as the case may be, shall apply to any order so made and every such order shall contain the like statements and particulars.

(2) No stamp duty shall be payable in respect of a vesting order made in place of a vesting or other assent.

Subs. (1). Form of order.

It will be noticed that an order under this section takes the place of a "principal vesting deed" or a "subsidiary vesting deed," as the case may be, and is to contain the like statements and particulars.

(d) *Forfeiture and Stamps.*

S. L. Act, s. 14. Forfeiture and stamps.

Sect. 14 of the Act is as follows:—

14.—(1) Any vesting effected under the powers conferred by this Act in relation to settled land shall not operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

(2) Nothing in this Act shall operate to impose any stamp duty on a vesting or other assent.

(e) *Enforcement of Equitable Interests, &c.*

S. L. Act, s. 18. "Enforcement of equitable interests and powers against the estate owner."

Sect. 16 (*m*) of the Act contains provisions (1) as to the enforcement against the estate owner in whom the settled land is vested (but in the case of personal representatives without prejudice to their rights and powers for purposes of administration) of "all equitable interests and powers in or over settled land (whether created before or after the date of any vesting instrument affecting the legal estate)"; and (2) as to his duty, in certain cases, to transfer or create legal estates.

(*m*) This section does not affect a purchaser of a legal estate taking free from any equitable interest or power; see sub-sect. (8).

Part IV. Chap. IV.

Duty of estate owner—

(1) To give effect to equitable interests, &c:

As regards (1), the estate owner shall stand possessed of the settled land and the income (*n*) thereof upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the settled land or the income thereof of which he has notice according to their respective priorities (*o*).

As regards (2), the estate owner shall be bound, if so requested in writing,—

(i) To transfer or create such legal estate as may be required for giving legal effect to the rights of any person of full age who has become entitled to require a legal estate in the settled land to be vested in him in priority to the settlement (*p*); and

(ii) Where—

(a) any principal sum is required to be raised on the security of the settled land, by virtue of any trust, or by reason of the exercise of an equitable power affecting the settled land, or by any person or persons who under the settlement is or are entitled or together entitled to or has or have a general power of appointment over the settled land, whether subject to any equitable charges or powers of charging subsisting under the settlement or not; or

(b) the settled land is subject to any equitable charge for securing money actually raised and affecting the whole estate the subject of the settlement;

to create such legal estate or charge by way of legal mortgage as may be required for raising the money or giving legal effect to the equitable charge (*q*).

Effect of legal estate or charge created under para. (iii).

Any legal estate or charge by way of legal mortgage so created shall (1) take effect *and be expressed to take effect* subject to any prior equitable charges or powers of charging subsisting under the settlement, unless the persons entitled to such prior charges or to exercise such prior powers consent

(*n*) "Income" includes rents and profits. See Table of Definitions, above, Part I., Chapter VII.
(*o*) S. L. Act, s. 16 (1) (i).
(*p*) Ibid. (ii).
(*q*) Ibid. (iii).

to the same being postponed (*r*); and (2), *if expressed to be made by the estate owner pursuant to this section,* shall, in favour of the mortgagee or chargee and persons deriving title under him, take effect in priority to all the trusts of the settlement and all equitable interests and powers subsisting or to arise thereunder *except those to which it is expressly made subject,* whether or not he has notice of any such trusts, interests or powers, and he shall not be concerned to see that a case had arisen to authorise the mortgage or charge, or that no more money than was wanted was raised (*s*).

Subs. (4). Creation of legal mortgage.

By sub-sect. (4) effect may be given by creation of a "legal mortgage" (*t*) to an agreement for a mortgage, or a charge or lien, whether or not arising by operation of law, if the agreement charge or lien ought to have priority over the settlement.

Subs. (5). Restriction on creation of legal estates.

By sub-sect. (5), save as thereinbefore expressly provided, no legal estate shall, so long as the settlement is subsisting, be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement.

Subs. (6). Application for directions.

By sub-sect. (6), if there is a question or doubt whether any and what legal estate ought to be transferred or created pursuant to this section, an application may be made to the Court for directions as thereinafter provided (*u*).

Subs. (7). Vesting order.

By sub-sect. (7), in the cases therein mentioned, the Court may, on the application of any person interested, make a vesting order transferring or creating the requisite legal estate.

(f) *Appointment of new, and discharge of, Trustees.*

S. L. Act, ss. 35, 17 and 18.

These subjects are dealt with in sects. 35, 17 and 18 of the Act, and as these sections are important as possibly affecting the validity of transactions under the Act, they are here set out at length.

(*r*) Ibid. proviso to (iii). Nothing in para. (iii) is to affect the power conferred by the Act on a tenant for life of raising money by mortgage, or of directing capital money to be applied in discharge of incumbrances: see sub-sect. (3).
(*s*) S. L. Act, s. 16 (2).
(*t*) See Table of Definitions, above, Part I., Chapter VII.
(*u*) See S. L. Act, s. 93, below, p. 338.

Part IV. Chap. IV.

Procedure on appointment of new trustees.

35.—(1) Whenever a new trustee for the purposes of this Act is appointed of a trust instrument or a trustee thereof for the purposes aforesaid is discharged from the trust without a new trustee being appointed, a deed shall be executed supplemental to the last or only principal vesting instrument containing a declaration that the persons therein named, being the persons who after such appointment or discharge, as the case may be, are the trustees of the trust instrument for the purposes aforesaid, are the trustees of the settlement for those purposes; and a memorandum shall be endorsed on or annexed to the last or only principal vesting instrument in accordance with the Trustee Act, 1925 (*x*).

15 Geo. 5, c. 19.

(2) Every such deed as aforesaid shall, if the trustee was appointed or discharged by the Court, be executed by such person as the Court may direct, and, in any other case, shall be executed by—

(i) the person, if any, named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement, or if no person is so named, or the person is dead or unable or unwilling to act, the persons who if the principal vesting instrument had been the only instrument constituting the settlement would have had power to appoint new trustees thereof;

(ii) the persons named in the deed of declaration as the trustees of the settlement; and

(iii) any trustee who is discharged as aforesaid or retires.

(3) A statement contained in any such deed of declaration as is mentioned in this section to the effect that the person named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement is unable or unwilling to act, or that a trustee has remained outside the United Kingdom for more than twelve months, or refuses or is unfit to act, or is incapable of acting, shall in favour of a purchaser of a legal estate be conclusive evidence of the matter stated.

Deed of discharge on termination of settlement.

17.—(1) Where the estate owner of any settled land holds the land free from all equitable interests and powers under a trust instrument, the persons who in the last or only principal vesting instrument or the last or only endorsement on or annex thereto are declared to be the trustees of the settlement or the survivors of them shall, save as hereinafter mentioned, be bound to execute, at the cost of the trust estate, a deed declaring that they are discharged from the trust so far as regards that land:

Provided that, if the trustees have notice of any derivative settlement, trust for sale or equitable charge affecting such land, they shall not execute a deed of discharge until—

(a) in the case of a derivative settlement, or trust for sale, a vesting instrument or a conveyance has been executed or made for giving effect thereto; and

(*x*) See T. Act, s. 35 (2), below, Part V.

(b) in the case of an equitable charge, they are satisfied that the charge is or will be secured by a legal mortgage, or is protected by registration as a land charge, or by deposit of the documents of title, or that the owner thereof consents to the execution of the deed of discharge.

Where the land is affected by a derivative settlement or trust for sale, the deed of discharge shall contain a statement that the land is settled land by virtue of such vesting instrument as aforesaid and the trust instrument therein referred to, or is held on trust for sale by virtue of such conveyance as aforesaid, as the case may require.

(2) If, in the circumstances mentioned in sub-section (1) of this section and when the conditions therein mentioned have been complied with, the trustees of a settlement on being requested to execute a deed of discharge—

(a) by the estate owner; or

(b) by a person interested under, or by the trustees of, a derivative settlement; or

(c) by the trustees of a conveyance on trust for sale;

refuse to do so, or if for any reason the discharge cannot be effected without undue delay or expense, the estate owner, person interested, or trustees may apply to the Court for an order discharging the first mentioned trustees as respects the whole or any part of the settled land, and the Court may make such order as it may think fit.

(3) Where a deed or order of discharge contains no statement to the contrary, a purchaser of a legal estate in the land to which the deed or order relates shall be entitled to assume that the land has ceased to be settled land, and is not subject to any trust for sale.

Application of s. 17.

It seems clear from the opening words of sect. 18 of the Act (*y*), and also from the language of sub-sect. (1) of sect. 17, that the latter section applies only where a principal vesting deed has been executed, and that the words "if any" must be read in after the words "the last or only principal vesting instrument." If so, it follows that if, *before* any principal vesting instrument has been executed, the estate owner of any settled land holds the land free from all equitable interests and powers under a trust instrument, no deed of discharge is necessary, and he can exercise forthwith his powers as absolute owner. Such a case, it is thought, can rarely, if ever, arise, except in the case of a settlement subsisting at the commencement of the Act (*z*).

Only applies where there has been a principal vesting instrument.

(*y*) Below, p. 306.
(*z*) See above, p. 261.

Part IV. Chap. IV.

Restrictions on dispositions of settled land where trustees have not been discharged.

18.—(1) Where land is the subject of a vesting instrument and the trustees of the settlement have not been discharged under this Act, then—

(a) any disposition by the tenant for life or statutory owner of the land, other than a disposition authorised by this Act or any other statute, or made in pursuance of any additional or larger powers mentioned in the vesting instrument, shall be void, except for the purpose of conveying or creating such equitable interests as he has power, in right of his equitable interests and powers under the trust instrument, to convey or create; and

(b) if any capital money is payable in respect of a transaction, a conveyance to a purchaser of the land shall only take effect under this Act if the capital money is paid to or by the direction of the trustees of the settlement or into Court; and

(c) notwithstanding anything to the contrary in the vesting instrument, or the trust instrument, capital money shall not, except where the trustee is a trust corporation, be paid to or by the direction of fewer persons than two as trustees of the settlement.

(2) The restrictions imposed by this section do not affect—

(a) the right of a personal representative in whom the settled land may be vested to convey or deal with the land for the purposes of administration;

(b) the right of a person of full age who has become absolutely entitled (whether beneficially or as trustee for sale or personal representative or otherwise) to the settled land, free from all limitations, powers, and charges taking effect under the trust instrument, to require the land to be conveyed to him;

(c) the power of the tenant for life, statutory owner, or personal representative in whom the settled land is vested to transfer or create such legal estates, to take effect in priority to the settlement, as may be required for giving effect to any obligations imposed on him by statute, but where any capital money is raised or received in respect of the transaction the money shall be paid to or by the direction of the trustees of the settlement or in accordance with an order of the Court.

Application of s. 18.

It will be seen that this section applies only where (1) land is the subject of a vesting instrument, and (2) the trustees of the settlement have not been discharged under the Act. It has no application, therefore, where the land, although settled land, is *not* the subject of a vesting instrument.

The effect of sub-sect. (1) appears to be that, where the section applies, the land must continue to be dealt with, and can effectually be dealt with, only on the footing that it is settled land, although, in fact, the settlement may have come to an end by the estate owner holding the land free from all equitable interests and powers under a trust instrument.

Effect of subs. (1).

It would seem that paragraph (a) of sub-sect. (2) can apply only where settled land, having been vested in a tenant for life or statutory owner, in whose favour a vesting instrument was executed, has on his death devolved on his personal representative. If so, it is difficult to see what right the latter could have to convey or deal with the land for the purposes of administration; for it would be trust property, not subject to the debts of the deceased. The paragraph cannot well apply to land settled by the will of a testator and vested in his representatives; for in such a case, either there would have been no vesting instrument, in which case the section would not apply, or, if there had been a vesting instrument, it must have taken the form of a conveyance or vesting assent by the representatives of the testator, in which case the land would no longer be vested in them.

Subs. (2) (a). Personal representative.

The effect of paragraph (b) of sub-sect. (2) appears to be, not to dispense with the necessity for a deed of discharge, but to enable the person of full age who has become absolutely entitled as mentioned in this paragraph to require the land to be conveyed to him before the deed of discharge is executed.

Sub. 2 (b). Person absolutely entitled.

(g) *Further provisions as to "Tenants for Life."*

Sects. 19 to 29 of the Act deal with the subject of "Tenants for Life and Persons with Powers of Tenant for Life." Of these only sects. 21, 22, 28 and 29 have still to be mentioned.

S. L. Act, ss. 19 to 29. Subject matter.

Sect. 21 of the Act deals with the case "where a person of full age is beneficially entitled in possession to a legal estate subject to any equitable interests or powers."

S. L. Act, s. 21. "Absolute owners subject to certain interests to have the powers of tenant for life."

By sub-sect. (1) of the section such a person, *for the purpose of overreaching such interests or powers*, may, notwithstanding

Subs. (1). Power for the absolute

Part IV. Chap. IV.

owner, *in effect*, to create a settlement of the land.

any stipulation to the contrary (*a*), by deed (which shall have effect as a "principal vesting deed") declare that the legal estate is vested in him on trust to give effect to all interests and powers affecting the legal estate, and that deed shall be executed by two or more individuals approved or appointed by the Court or a trust corporation, who shall be stated to be the trustees of the settlement for the purposes of the Act. Thereupon, so long as any of the equitable interests and powers are subsisting, certain provisions are to have effect under which the land will, for all practical purposes, be in the same position as settled land, and the person so entitled as aforesaid, and each of his successors in title *being an estate owner*, will have the powers of a tenant for life.

Analogy of the case in L. P. Act, s. 2 (2).

The case here contemplated appears to be analogous to, if not identical with, that put in sub-sect. (2) of sect. 2 of the Property Act (*b*), namely, of an estate owner whose legal estate is not, when the equitable interest or power is created, subject to a trust for sale or a settlement. In that case, if the estate owner disposes of his estate to trustees upon trust for sale, and at the date of a conveyance under the disposition upon trust for sale the trustees are either (a) two or more individuals approved or appointed by the Court or their successors in office, or (b) a trust corporation, such equitable interest or power will be *overreached* by the conveyance.

In either case (1) Why is the land not settled land?

In each of these two cases the following questions appear to arise:—(1) How does the position of the owner differ from that of a person who, being of full age and entitled in possession, is "a person beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates, interests, charges, or powers of charging, subsisting or capable of being exercised under a settlement" (*c*)? In other words, why is not the land "settled land," independently of any such vesting deed as is authorised? The answer to the question may depend on the answer to a further question, namely, What equitable interests or powers, if any, differing from those subsisting or capable of being exercised under a settlement, are contemplated in the two cases under consideration?

(2) What are the "equitable interests and powers" which are referred to?

(*a*) That is, presumably, in the instrument under which he derives his interest as "absolute owner."

(*b*) Above, Part III., Chapter XI., p. 204.

(*c*) S. L. Act, s. 20 (1) (ix), above, Part IV., Chapter II., p. 264.

By sub-sect. (2) of sect. 21 there are excepted from the operation of sub-sect. (1) of that section certain equitable interests and powers which are identical with those excepted by sub-sect. (3) of sect. 2 of the Property Act from the operation of sub-sect. (2) of the latter section.

Subs. (2). *Excepted* equitable interests and powers.

Sub-sect. (3) of sect. 21 provides that, subject to the powers conferred by the Act on a tenant for life, nothing in that section shall deprive an equitable chargee of any of his rights or of his remedies for enforcing those rights.

Subs. (3). Saving of rights of equitable chargee.

Sect. 22 of the Act is considered hereafter in connection with § 2 ("Power of Sale under Settled Land Acts") of Chapter IX. of the Treatise, which chapter treats "Of Title under the exercise of Powers" (*d*).

S. L. Act, s. 22. "Provisions applicable where interest in settled land is restored."

Sect. 28 of the Act is considered hereafter in connection with § 3 ("Lunatics and Drunken Persons") of Chapter XVI. of the Treatise, which chapter treats "Of Personal Incapacity" (*e*).

S. L. Act, s. 28. "Tenant for life lunatic."

Sect. 29 of the Act is considered hereafter in connection with § 7 ("Sale of Charity Lands") of Chapter X. of the Treatise, which chapter treats "Of Particular Titles" (*f*).

S. L. Act, s. 29. "Charitable and public trusts."

(*d*) Below, Part IX., Section IX.
(*e*) Below, Part IX., Section XVI.
(*f*) Below, Part IX., Section X.

CHAPTER V.

POWERS OF A TENANT FOR LIFE.

Section i.—*Introductory.*

Part II. of the S. L. Act. Subject matter.

PART II. of the Settled Land Act, comprising sects. 38 to 72, is headed "Powers of a Tenant for Life." Space does not admit of setting out or referring in detail to all these sections, but it may be stated generally (1) that they include enactments replacing, with or without amendments, several of the enactments in the repealed Acts which are *in pari materia;* (2) that where an enactment which is so replaced refers to a tenant for life, the substituted enactment is, as a general rule, extended so as to include a "statutory owner"; and (3) that provisions in any enactments so replaced which relate to partition, undivided shares, or enfranchisement, are, as might be expected, not re-enacted.

Section ii.—*Re-enactments.*

The following Table shows by what enactments (if any) contained in Part II. of the Act such enactments *in pari materia* are replaced, with or without amendment.

Subject-matter of repealed enactment.	Repealed enactment.	Corresponding enactment in Settled Land Act.
(a) Powers to tenant for life to sell, &c.	1882 (*a*), s. 3 (i)	Sect. 38 (i)
	(ii)	(ii)
	(iii)	(iii)
	1890, s. 5	(iii)
	1882, s. 3 (iv)	Not re-enacted.
(b) Regulations respecting sale, enfranchisement, exchange and partition.	s. 4 (1)	Sect. 39 (1)
	(2)	Sect. 40 (1)
	(3)	Sect. 39 (6)
	(4)	(7)
	(5)	(6)
	(6)	Sect. 49 (1) (b)
	(7)	Not re-enacted.
	(8)	Sect. 40 (3)

(*a*) In this Table the S. L. Acts of 1882, 1884, 1889 and 1890 are referred to only by the respective years in which they were passed.

Subject-matter of repealed enactment.	Repealed enactment.	Corresponding enactment in Settled Land Act.
(c) Transfer of encumbrances on land sold, &c.	1882, s. 5	Sect. 69
(d) Power for tenant for life to lease for ordinary or building or mining purposes.	s. 6	Sect. 41
(e) Regulations respecting leases generally.	s. 7 (1) (2) (3), (4) ..... (5)	Sect. 42 (1) (2) (3)
(f) Regulations respecting building leases.	s. 8	Sect. 44
(g) Regulations respecting mining leases.	s. 9 (1) (i) .... (ii) .... (2)	Sect. 45 (1) (i) (iii) (2)
(h) Variation of building or mining lease according to circumstances of district.	s. 10	Sect. 46
(i) Part of mining rent to be set aside.	s. 11	Sect. 47
(k) Leasing powers for special objects.	s. 12 (i) ..... (ii) ..... (iii)	Not re-enacted. Sect. 43 (i) (ii)
(l) Surrender and new grant of leases.	s. 13	Sect. 52 (1) to (6)
(m) Dedication for streets, open spaces, &c.	s. 16 (*b*)	Sect. 56 (1)
(n) Separate dealing with surface and minerals, with or without wayleaves, &c.	s. 17 (1) ..... (2)	Sect. 50 Not re-enacted.
(o) Mortgage for equality money, &c.	s. 18	Sect. 71 (1) (iii)
(p) Completion of sale, lease, &c., by conveyance.	s. 20 (1) ..... (2) ..... (3)	Sect. 72 (1) (2) Not re-enacted.
(q) Cutting and sale of timber, and part of proceeds to be set aside.	s. 35	Sect. 66
(r) Heirlooms	s. 37	Sect. 67 (1) to (3)

(*b*) Sect. 14 (Power to grant to copyholders licences for leasing) is not re-enacted. Sect. 15 (Restriction as to mansion-house, park, &c.) was repealed, and, with some variation, re-enacted by the Act of 1890, s. 10, itself now repealed and replaced, with further amendments, by S. L. Act, s. 65.

Part IV. Chap. V.

Subject-matter of repealed enactment.	Repealed enactment.	Corresponding enactment in Settled Land Act.
(s) Fine on a lease to be capital money.	1884, s. 4.....	Sect. 42 (4)
(t) Option of purchase in building lease. Price to be capital money.	1889, ss. 2, 3	Compare sect. 51
(u) Creation of easements on exchange or partition.	1890, s. 5.....	Sect. 49 (1) (a)
(v) Power to complete predecessor's contract.	s. 6	Sect. 63
(w) Provision as to lease for 21 years.	s. 7	Sect. 42 (5)
(x) Provision as to mining leases.	s. 8	Sect. 45 (1) (ii)
(y) Power to reserve a rent-charge on a grant in fee simple.	s. 9	Compare sect. 39 (2)
(z) Restriction on sale of mansion.	s. 10 (2) (3) ...	Sect. 65
(aa) Power to raise money by mortgage.	s. 11	Sect. 71 (1) (i) (ix), (2)
(bb) Provision enabling dealings with tenant for life.	s. 12	Sect. 68 (1) (2)

Section iii.—*Changes effected by Part II. of the Act.*

Minor changes.

Certain of the enactments specified in the third column of the above Table introduce amendments of the pre-existing law. These are, for the most part, relatively unimportant (*c*).

Major changes.

The object of this section of this chapter is to draw attention to the more important amendments introduced by enactments in Part II. of the Act, whether so specified or not.

(a) *Power to Sell for a Rent.*

S. L. Act, s. 39. "Regulations respecting sales."

Under the repealed Acts, except in special circumstances (*d*), a tenant for life could only sell for cash (*e*). Sub-sects. (2) to

(*c*) Some of them are referred to below, Part IX., Section IX., in connection with Chapter IX. of the Treatise.

(*d*) See S. L. Act, 1882, s. 10; S. L. Act, 1890, s. 9.

(*e*) See *Payne* v. *The Cork Co., Ltd.*, (1900) 1 Ch. 308, 314.

(4) of sect. 39 of the Act authorise sales to be made in consideration wholly or partially of a perpetual or terminable rent, and prescribe the conditions under which such sales may be made.

Sub-sects. (2) to (4) are as follows:—

Subss. (2) to (4). Sales for a rent.

(2) A sale may be made in consideration wholly or partially of a perpetual rent, or a terminable rent consisting of principal and interest combined, payable yearly or half yearly to be secured upon the land sold, or the land to which the easement, right or privilege sold is to be annexed in enjoyment or an adequate part thereof.

In the case of a terminable rent, the conveyance shall distinguish the part attributable to principal and that attributable to interest, and the part attributable to principal shall be capital money arising under this Act:

Provided that, unless the part of the terminable rent attributable to interest varies according to the amount of the principal repaid, the trustees of the settlement shall, during the subsistence of the rent, accumulate the income of the said capital money in the way of compound interest by investing it and the resulting income thereof in securities authorised for the investment of capital money and shall add the accumulations to capital.

(3) The rent to be reserved on any such sale shall be the best rent that can reasonably be obtained, regard being had to any money paid as part of the consideration, or laid out, or to be laid out, for the benefit of the settled land, and generally to the circumstances of the case, but a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable during any period not exceeding five years from the date of the conveyance.

(4) Where a sale is made in consideration of a rent, the following provisions shall have effect:—

(i) The conveyance shall contain a covenant by the purchaser for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days;

(ii) A duplicate of the conveyance shall be executed by the purchaser and delivered to the tenant for life or statutory owner, of which execution and delivery the execution of the conveyance by the tenant for life or statutory owner shall be sufficient evidence;

(iii) A statement, contained in the conveyance or in an indorsement thereon, signed by the tenant for life or statutory owner, respecting any matter of fact or of calculation under this Act in relation to the sale, shall, in favour of the purchaser and of those claiming under him, be sufficient evidence of the matter stated.

Where a *perpetual* rent is, or forms part of, the consideration, such rent will, of course, be applicable as *income* of the settled land.

Subs. (2). Perpetual rent.

Terminable rent.

Where a *terminable* rent is, or forms part of, the consideration, the following provisions apply:—(1) The rent will consist of principal and interest combined; (2) the conveyance must distinguish the part attributable to principal and that attributable to income; (3) the part attributable to principal will be capital money arising under the Act; (4) such capital money must be invested (*f*); and (5) the trustees of the settlement must, during the subsistence of the rent, accumulate the income of the investments, and must add the accumulations to capital, *unless* the part of the terminable rent attributable to interest varies according to the amount of the principal repaid.

Rentcharge.

The rent, whether perpetual or terminable, is to be *secured* upon the land sold, or the land to which the easement, right or privilege sold is to be annexed in enjoyment, or an adequate part thereof, and, accordingly, will be "a rentcharge reserved on a grant of settled land." As we have seen (*g*), where a rentcharge is reserved on a grant of settled land, the transaction must be recorded by a subsidiary vesting deed in the prescribed form.

Subs. 4 (i). Condition of re-entry.

The rule against perpetuities will not apply to the condition of re-entry, even though the rent be perpetual, for in such a case the rent will be a "rentcharge held for a legal estate" (*h*).

Subs. (5). Sale to a company.

Sub-sect. (5) introduces a further change in the law in the case of a sale to a company incorporated as mentioned in that sub-section. Sub-sect. (5) is as follows:—

(5) The consideration on a sale to any company incorporated by special Act of Parliament or by provisional order confirmed by Parliament or by any other order, scheme or certificate having the force of an Act of Parliament, may, with the consent of the tenant for life, consist, wholly or in part, of fully-paid securities of any description of the company, and such securities shall be vested in the trustees of the settlement and shall be subject to the provisions of this Act

(*f*) This provision appears to be implied.
(*g*) S. L. Act, s. 10, above, Part IV., Chapter IV., p. 296.
(*h*) L. P. Act, s. 4, above, Part III., Chapter IX.

relating to securities representing capital money arising under this Act, and may be retained and held by the trustees in like manner as if they had been authorised by this Act for the investment of capital money.

It will be noticed that this sub-section applies only to a company incorporated by special Act, or by some order, scheme or certificate having the force of an Act of Parliament. It does not, therefore, apply to companies incorporated under the Companies (Consolidation) Act, 1908.

(b) *Leasing Powers.*

S. L. Act, s. 41. "Power to lease for ordinary or building or mining or forestry purposes."

Sect. 41 of the Act re-enacts the powers of leasing given by sect. 6 of the Act of 1882, with the modification that any authorised lease may be for any term not exceeding—

(i) In case of a building lease, 999 years, instead of only 99 years;

(ii) In case of a mining lease, 100 years, instead of only 60 years;

(iii) In case of a forestry lease, 999 years;

(iv) In case of any other lease, 50 years, instead of only 21 years.

Forestry lease.

"Forestry lease" means a lease to the Forestry Commissioners for any purpose for which they are authorised to acquire land by the Forestry Act, 1919 (*i*).

S. L. Act, s. 48.

Regulations respecting forestry leases are contained in the following section of the Act, which is new:—

48.—(1) In the case of a forestry lease—

Regulations respecting forestry leases.

(i) a peppercorn rent or a nominal or other rent less than the rent ultimately payable, may be made payable for the first ten years or any less part of the term;

(ii) the rent may be made to be ascertainable by, or to vary according to the value of the timber on the land comprised in the lease, or the produce thereof, which may during any year be cut, converted, carried away, or otherwise disposed of;

(iii) a fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent according

(*i*) See Table of Definitions, above, Part I., Chapter VII.

to value in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent; and

(iv) any other provisions may be made for the sharing of the proceeds or profits of the user of the land between the reversioner and the Forestry Commissioners.

(2) In this section the expression "timber" includes all forest products.

(c) *Miscellaneous Powers.*

(i) *Allocation of Charges, Timber, Fixtures.*

S. L. Act, s. 49. "Power on dispositions to impose restrictions and make reservations and stipulations."

Sub-sects. (1) and (2) of sect. 49 of the Act confer certain powers ancillary to a sale or other disposition or dealing under the powers of the Act.

Subs. (1) (c). Allocation of charges.

Paragraph (c) of sub-sect. (1) (*k*) of this section gives power to allocate the incidence of capital or annual sums as between the parties to the sale or other disposition or dealing, and is as follows:—

(c) the whole or any part of any capital or annual sum (and in the case of an annual sum whether temporary or perpetual) charged on or payable out of the land disposed of, or any part thereof, and other land subject to the settlement, may as between the tenant for life or statutory owner and his successors in title, and the other party and persons deriving title under or in succession to him (but without prejudice to the rights of the person entitled to such capital or annual sum) be charged exclusively on the land disposed of, or any part thereof, or such other land as aforesaid, or any part thereof, in exoneration of the rest of the land on or out of which such capital or annual sum is charged or payable.

Application of para. (c).

It will be seen that paragraph (c) applies only where the capital or annual sum affects not only "the land disposed of," or some part thereof, but also other land subject to the settlement, and that the alternatives are to charge it *exclusively* either (1) on the land disposed of to "the other party," or on some part thereof, or (2) on the "other" land subject to the settlement. The paragraph, therefore, confers no power to "apportion" the capital or annual sum between the land disposed of and the land retained.

(*k*) Paragraphs (a) and (b) re-enact respectively, in substance, sect. 5 of the S. L. Act, 1890, and sect. 4 (6) of the S. L. Act, 1882.

Where the capital or annual sum is "charged exclusively" under the power conferred by this paragraph, the provisions in that behalf contained in sect. 190 of the Property Act (*l*) will apply.

L. P. Act, s. 190.

"Charged exclusively."

It seems that where, under this paragraph, the land disposed of is charged exclusively with the capital or annual sum, such land will become "settled land," even if previously unsettled, if the charge be one which falls within sect. 1 (1) (v) of the Settled Land Act (*m*).

"Settled land."

Subs. (2). Sale of timber or fixtures at a valuation.

Sub-sect. (2) of sect. 49 contains provisions enabling "timber" or "fixtures" to be sold at a valuation, and is as follows:—

(2) A sale of land may be made subject to a stipulation that all or any of the timber and other trees, pollards, tellers, underwood, saplings and plantations on the land sold (in this section referred to as "timber") or any articles attached to the land (in this section referred to as "fixtures") shall be taken by the purchaser at a valuation, and the amount of the valuation shall form part of the price of the land, and shall be capital money accordingly.

Subs. (3). Consideration paid to wrong person.

Sect. 35 of the Act of 1882 (*n*) did not enable a tenant for life, entitled to cut and sell timber for his own use, to receive for his own use the valuation price of *uncut* timber sold with the estate (*o*). Sub-sect. (3) of sect. 49 of the new Act contains provisions applicable where on a sale the consideration attributable to any timber or fixtures is by mistake paid to a person not entitled to receive it.

The sub-section is as follows:—

(3) Where on a sale the consideration attributable to any timber or fixtures is by mistake paid to a tenant for life or other person not entitled to receive it, then, if such person or the purchaser or the persons deriving title under either of them subsequently pay the aforesaid consideration, with such interest, if any, thereon as the Court may direct, to the trustees of the settlement or other persons entitled thereto or into Court, the Court may, on the application of the purchaser or the persons deriving title under him, declare that the disposition is to take effect as if the whole of the consideration had at

(*l*) Above, Part III., Chapter XV., p. 247.
(*m*) Above, Part IV., Chapter II., p. 258.
(*n*) Re-enacted *verbatim* by sect. 66 of the S. L. Act.
(*o*) *In re Llewellin*, 37 C. D. 317.

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the date thereof been duly paid to the trustees of the settlement or other persons entitled to receive the same.

The person, not entitled to receive the same, to whom the consideration is paid, and his estate and effects shall remain liable to make good any loss attributable to the mistake.

Relief against consequent defect of title.

The object of the sub-section is to afford relief against any defect of title consequent on the payment of the consideration to the wrong person, and such relief can only be obtained on an application to the Court.

(ii) *Power to grant Options.*

S. L. Act, s. 51. "Power to grant options."

Sect. 51 of the Act supersedes and largely extends the power to grant options conferred on a tenant for life by sect. 2 of the Settled Land Act, 1889 (*p*). By sect. 51 a tenant for life may at any time, either with or without consideration, grant by writing an option to purchase or take a lease of the settled land, or any part thereof, or any easement, right, or privilege over or in relation to the same at a price or rent fixed at the time of the granting of the option (*q*). Every such option must be made exercisable within an agreed number of years not exceeding ten (*r*). The price or rent must be the best which, having regard to all the circumstances, can reasonably be obtained (*s*). An option to take a mining lease may be coupled with the grant of a licence to search for and prove any mines or minerals under the settled land, or any part thereof, pending the exercise of the option (*t*). The consideration for the grant of the option is to be capital money (*u*).

For purchase or lease of settled land.

Exercisable within ten years.

At best price or rent.

In case of mining lease.

Consideration for option to be capital money.

(iii) *Surrenders and Regrants.*

S. L. Act, s. 52. "Surrenders and re-grants."

Sub-sects. (1) to (6) of sect. 52 of the Act re-enact in substance the powers conferred on a tenant for life by sect. 13 of the Act of 1882 to accept surrenders of leases and make new leases, but extend those powers to the acceptance by the

(*p*) *Semble*, this Act is not expressly repealed: see above, Part I., Chap. II., p. 5, n. (*i*).
(*q*) S. L. Act, s. 51 (1).
(*r*) *Ibid.* (2).
(*s*) S. L. Act, s. 51 (3), which specifies how the price or rent may be arrived at.
(*t*) *Ibid.* (4).
(*u*) *Ibid.* (5).

tenant for life of a regrant of any "land granted in fee simple," and the grant by him of a new "grant in fee simple."

Subss. (1) to (6).

In this section "land granted in fee simple" means land so granted with or subject to a reservation thereout of a perpetual or terminable rentcharge which is or forms part of the settled land (*v*), and "grant in fee simple" has a corresponding meaning.

Extension of powers conferred by S. L. Act, 1882, s. 13, to acceptance of regrants and to new grants.

Sub-sects. (7) and (8) of sect. 52 are as follows:—

Subs. (9).

(7) All money, not being rent or a rentcharge, received on the exercise by the tenant for life of the powers conferred by this section, shall, unless the Court, on an application made within six months after the receipt thereof or within such further time as the Court may in special circumstances allow, otherwise directs, be capital money arising under this Act.

Subss. (7) and (8).

Consideration money, not being rent or rentcharge, to be capital money, unless Court otherwise directs.

(8) A regrant shall be made to the tenant for life or statutory owner, and shall be deemed a subsidiary vesting deed, and the statements and particulars required in the case of subsidiary vesting deeds shall be inserted therein.

Regrant to be subsidiary vesting deed.

(iv) *Power to accept Leases.*

Sect. 53 of the Act is as follows:—

S. L. Act, s. 53.

53.—(1) A tenant for life may accept a lease of any land, or of any mines and minerals or of any easement, right, or privilege, convenient to be held or worked with or annexed in enjoyment to the settled land, or any part thereof, for such period, and upon such terms and conditions, as the tenant for life thinks fit:

Acceptance of leases.

Provided that no fine shall be paid out of capital money in respect of such lease.

(2) The lease shall be granted to the tenant for life or statutory owner, and shall be deemed a subsidiary vesting deed, and the statements and particulars required in the case of subsidiary vesting deeds shall either be inserted therein or endorsed thereon.

(3) The lease may contain an option to purchase the reversion expectant on the term thereby granted.

We have seen (*w*) what is a "subsidiary vesting deed," and what statements and particulars it must contain.

Subs. (2).

Subsidiary vesting deed.

(*v*) See S. L. Act, s. 39, above, p. 312.
(*w*) Above, Part IV., Chapter IV., p. 296.

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(v) *Power to grant Land gratuitously for certain Purposes.*

Section 54. "Power to grant water rights to statutory bodies."

Section 55. "Power to grant land for public and charitable purposes."

"For the development, improvement, or general benefit of the settled land, or any part thereof, a tenant for life may make a grant in fee simple or absolutely, or a lease for any term of years absolute, for a nominal price or rent, or for less than the best price or rent that can reasonably be obtained, or gratuitously" (*x*)—

(1) to any statutory authority (*y*), of any such water rights as are specified in sub-sect. (1) of sect. 54 of the Act, not being greater rights than could have been created by a person absolutely entitled for his own benefit to the settled land affected (*z*); and

(2) of any part of the settled land, with or without any easement, right or privilege over or in relation to the settled land or any part thereof, for all or any one or more of the several public and charitable purposes specified in sub-sect. (1) of sect. 55 of the Act, not exceeding the respective areas therein mentioned.

Capital money.

All money, not being rent, received on the exercise of any power conferred by either of these sections is to be capital money arising under the Act (*a*).

(vi) *Streets and Open Spaces.*

S. L. Act, s. 56. "Dedication for streets, open spaces, &c."

"On or after or in connection with a sale or grant for building purposes, or a building lease, or the development as a building estate of the settled land, or any part thereof, or at any other reasonable time, the tenant for life, for the general benefit of the residents on the settled land, or on any part thereof" (*b*), may exercise the powers of dedicating land for public purposes formerly conferred by sect. 16 of the Act of 1882 and now by sub-sect. (1) of sect. 56 of the new Act.

In regard to the dedication of land for such purposes, the tenant for life is to be in the same position as if he were an

(*x*) S. L. Act, ss. 54 (1), 55 (1).

(*y*) In sect. 54 (see sub-sect. (3)), "statutory authority" means an authority or company for the time being empowered by any Act of Parliament, &c., to provide with a supply of water any town, parish, or place in which the settled land or any part thereof is situated.

(*z*) S. L. Act, s. 54 (2).

(*a*) S. L. Act, ss. 54 (4), 55 (2). (*b*) *Ibid.* s. 56 (1).

absolute owner (*c*). He is also invested with special powers in regard to highways (*d*). All money, not being rent, received on the exercise of any power conferred by sect. 56 is to be capital money arising under the Act (*e*).

(vii) *Small Dwellings* (*f*), *&c.*

S. L. Act, s. 57. "Provision of land for small dwellings, small holdings and dwellings for working classes."

Sect. 57 of the Act re-enacts in substance the respective provisions of sub-sect. (1) (*g*) of sect. 74 of the Housing of the Working Classes Act, 1890; sub-sects. (4) and (5) (*g*) of sect. 40 of the Small Holdings and Allotments Act, 1908; and sect. 7 (*g*) of the Housing, Town Planning, &c. Act, 1909.

(viii) *Various Powers exercisable With or Without "Consideration in money or otherwise."*

Under sects. 58, 59 and 60 of the Act, a tenant for life may—

S. L. Act, s. 58. "Power to compromise claims and release restrictions, &c."

(1) with the consent in writing of the trustees of the settlement, either with or without giving or taking any "consideration in money or otherwise," compromise, compound, abandon, submit to arbitration, or otherwise settle any claim, dispute or question whatsoever relating to the settled land, or any part thereof (*h*);

S. L. Act, s. 59. "Power to vary leases and grants and to give licences and consents."

(2) with the like consent by deed or writing, either with or without "consideration in money or otherwise," release, waive or modify, or agree to release, waive or modify any covenant, agreement or restriction imposed on any other land for the benefit of the settled land, or any part thereof, or release, or agree to release, any other land from any easement, right or privilege, including a right of pre-emption, affecting the same for the benefit of the settled land, or any part thereof (*i*);

S. L. Act, s. 60. "Power to apportion rents."

(*c*) S. L. Act, s. 56 (2). (*d*) *Ibid.* (3).
(*e*) *Ibid.* (4).
(*f*) For the definition in the S. L. Act of "small dwellings," see Table of Definitions, above, Part I., Chapter VII.
(*g*) Repealed, S. L. Act, s. 119, and Fifth Schedule.
(*h*) S. L. Act, s. 58 (1).
(*i*) S. L. Act, s. 58 (2). Sub-sect. (3) empowers a tenant for life to enter into contracts in regard to any transaction affected by sect. 77 of the Railways Clauses Consolidation Act, 1845, or by sect. 22 of the Waterworks Clauses Act, 1847 (relating to support by minerals), or authorised by sect. 85 (a) of the former Act as enacted in Part II. of the Mines (Working Facilities and Support) Act, 1923.

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(3) by deed, either with or without any "consideration in money or otherwise," vary, release, waive or modify the terms of any lease of the settled land or any part thereof, or any covenants or conditions contained in any grant in fee simple of land subject to a reservation thereout of a rent which forms part of the settled land (*k*).

(4) give any licence, consent or approval required by virtue of any restrictive or other covenant enuring for the benefit of the settled land (*l*);

(5) by deed, either with or without "consideration in money or otherwise," agree for the apportionment of any rent reserved or created by any lease or grant (reserving rent) of the settled land or any part thereof, or any rent being or forming part of the settled land (*m*); and

(6) by deed, with or without giving or taking any "consideration in money or otherwise," procure the variation, release, waiver, or modification of the terms, covenants, agreements or conditions contained in any lease or grant under which the settled land, or any part thereof, is held or derived (*n*).

S. L. Act, s. 61.

Sect. 61 of the Act contains provisions applicable to any transaction to which any of the last preceding sections (namely, sects. 58, 59 and 60) relates, and is as follows:—

Provisions as to consideration.

Capital money.

61.—(1) All money, not being rent, payable by the tenant for life in respect of any transaction to which any of the three last preceding sections relates shall be paid out of capital money arising under this Act, and all money, not being rent, received on the exercise by the tenant for life of the powers conferred by any of those sections, shall, unless the Court, on an application made within six months after the receipt thereof or within such further time as the Court may in special circumstances allow, otherwise directs, be capital money arising under this Act.

"Consideration in money or otherwise."

(2) For the purpose of the three last preceding sections "consideration in money or otherwise" means—

(a) a capital sum of money or a rent;

(*k*) S. L. Act, s. 59 (1).
(*l*) S. L. Act, s. 59 (2).
(*m*) *Ibid.* s. 60 (1). This section applies to leases or grants made either before or after the commencement of the Act (sub-sect. (3)).
(*n*) *Ibid.* (2).

(b) land being freehold or leasehold for any term of years whereof not less than sixty years shall be unexpired;
(c) any easement, right or privilege over or in relation to the settled land, or any part thereof, or any other land;
(d) the benefit of any restrictive covenant or condition; and
(e) the release of the settled land, or any part thereof, or any other land, from any easement, right or privilege, including a right of pre-emption, or from the burden of any restrictive covenant or condition affecting the same.

(ix) *Manorial Incidents, &c.*

S. L. Act, s. 62. "Special provisions as to manorial incidents, &c."

Sect. 62 of the Act contains provisions with regard to various matters arising out of the enfranchisement of copyhold land, the extinguishment of manorial incidents, and the conversion of perpetually renewable leases or underleases into long terms effected respectively by the Property Acts, 1922 and 1924 (*o*).

(x) *Extension of Powers by the Court.*

S. L. Act, s. 64.

Sect. 64 of the Act contains a very useful provision enabling the Court to sanction transactions not otherwise authorised by the Act or by the settlement, and is analogous to sect. 57 of the Trustee Act (*p*), whereby the Court is empowered to give extraordinary powers to trustees in special circumstances. The latter section expressly does not apply to trustees of a settlement for the purposes of the Settled Land Act, no doubt for the reason that under the latter Act, with some few exceptions, the tenant for life alone has power to effect any transaction in relation to the settled land (*q*).

Sect. 64 of the Act is as follows:—

General power for the tenant for life to effect any transaction under an order of the Court.

64.—(1) Any transaction affecting or concerning the settled land, or any part thereof, or any other land (not being a transaction otherwise authorised by this Act, or by the settlement) which in the opinion of the Court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement, may, under an order of the Court, be effected by a tenant for life, if it is one which could have been validly effected by an absolute owner.

(2) In this section "transaction" includes any sale, extinguishment of manorial incidents, exchange, assurance, grant, lease, surrender, reconveyance, release, reservation, or other disposition, and any pur-

(*o*) Above, Part II.
(*p*) Below, Part V.
(*q*) See S. L. Act, ss. 108, 109, above, Part IV., Chapter III.

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chase or other acquisition, and any covenant, contract, or option, and any application of capital money (except as hereinafter mentioned), and any compromise or other dealing, or arrangement; but does not include an application of capital money in payment for any improvement not authorised by this Act, or by the settlement; and "effected" has the meaning appropriate to the particular transaction; and the references to land include references to restrictions and burdens affecting land.

(xi) *Provisions as to Special Classes of Property.*

S. L. Act, s. 65. "Power to dispose of mansion."

Sect. 65 of the Act, which re-enacts, with substantial amendments, sect. 10 of the Act of 1890, is considered hereafter (*r*) in connection with § 2 ("Powers of Sale under Settled Land Acts") of Chapter IX. of the Treatise, which chapter treats "Of Title under the Exercise of Powers."

S. L. Act, s. 67. "Sale and purchase of heirlooms under order of Court."

Sub-sects. (1), (2) and (3) of sect. 67 of the Act re-enact and make applicable "where personal chattels are settled so as to devolve with settled land, or to devolve therewith as nearly as may be in accordance with the law or practice in force at the date of the settlement, or are settled together with the land, or upon trusts declared by reference to the trusts affecting land," the provisions of sect. 37 of the Act of 1882 applicable "where personal chattels are settled on trust so as to devolve with land until a tenant in tail by purchase is born or attains the age of twenty-one years, or so as otherwise to vest in some person becoming entitled to an estate of freehold of inheritance in the land."

"Entailed interest."

The change in the wording of the new section is due to the fact that an "entailed interest" may now be created in personal chattels (*s*).

(xii) *Incumbrances.*

S. L. Act, s. 69. "Shifting of incumbrances."

Sect. 69 of the Act re-enacts sect. 5 of the Act of 1882, with certain amendments. Thus the new section expressly provides that an incumbrance may be shifted, whether capable or not of being overreached on the exercise by the tenant for life of his powers under the Act, and that it may be shifted not only on to any other part of the settled land, but on to all or any part of the capital money or securities representing capital money subject or to become subject to the settlement.

(*r*) Below, Part IX., Section IX.
(*s*) L. P. Act, s. 130, above, Part III., Chap. IX.

Sect. 70 of the Act is new and provides as follows:—

S. L. Act, s. 70. Power to vary provisions of an incumbrance and to charge by way of additional security.

70.—(1) Where an incumbrance affects any part of the settled land, the tenant for life may, with the consent of the incumbrancer, vary the rate of interest charged and any of the other provisions of the instrument, if any, creating the incumbrance, and with the like consent charge that incumbrance on any part of the settled land, whether already charged therewith or not, or on all or any part of the capital money or securities representing capital money subject or to become subject to the settlement, by way of additional security, or of consolidation of securities, and by a legal mortgage or otherwise, make provision accordingly.

(2) "Incumbrance" in this section includes any annual sum payable during a life or lives or during a term of years absolute or determinable, but in any such case an additional security shall be effected so as only to create a charge or security similar to the original charge or security.

(xiii) *Raising of Money.*

S. L. Act, s. 71. "Power to raise money by mortgage."

Sub-sects. (1) and (2) of sect. 71 of the Act re-enact sect. 18 of the Act of 1882, and sect. 11 of the Act of 1890, but provide that the money required shall be raised by a "legal mortgage" (*t*), and extend the purposes for any of which money may be so raised to the following (*u*):—

(i) [Discharging an incumbrance on the settled land or part thereof]; [S. L. Act, 1890, s. 11 (1).]

(ii) Paying for any improvement authorised by this Act or by the settlement;

(iii) [Equality of exchange]; [S. L. Act, 1882, s. 18.]

(iv) Extinguishing any manorial incidents;

(v) Compensating the steward on the extinguishment of manorial incidents and discharging the expenses incurred in connexion with the extinguishment;

(vi) Redeeming a compensation rentcharge in respect of the extinguishment of manorial incidents and affecting the settled land;

(vii) Commuting any additional rent made payable on the conversion of a perpetually renewable leasehold interest into a long term;

(viii) Satisfying any claims for compensation on the conversion of a perpetually renewable leasehold interest into a long term by any officer, solicitor, or other agent of the lessor in respect of fees or remuneration which would have been payable by the lessee or under-lessee on any renewal;

(ix) Payment of the costs of any transaction authorised by this section or either of the two last preceding sections.

(*t*) See Table of Definitions, above, Part I., Chapter VII.
(*u*) S. L. Act, s. 71 (1).

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S. L. Act, s. 72.

(xiv) *Conveyance.*

Sect. 72 of the Act is of first rate importance as defining (1) the extent of the estate or interest which can be affected by a "conveyance" by the tenant for life, and (2) the estates, interests, and charges which will or can be overreached by such conveyance; and should be closely compared with the corresponding sect. 20 of the Act of 1882.

Sect. 72 is as follows:—

Completion of transactions by conveyance.

[S. L. Act, 1882, s. 20 (1)].

72.—[(1) On a sale, exchange, lease, mortgage, charge,] or other disposition, [the tenant for life may, as regards land sold, given in exchange, leased, mortgaged, charged,] or otherwise disposed of, [or intended so to be, or as regards easements or other rights or privileges sold,] given in exchange, [leased,] mortgaged, or otherwise disposed of, [or intended so to be,] effect the transaction [by deed] to the extent of the estate or interest vested or declared to be vested in him by the last or only vesting instrument affecting the settled land [or any less estate or interest, in the manner requisite for giving effect to the sale, exchange, lease, mortgage, charge,] or other disposition, but so that a mortgage shall be effected by the creation of a term of years absolute in the settled land or by charge by way of legal mortgage, and not otherwise.

[Ib. (2).]

[(2) Such a deed, to the extent and in the manner to and in which it is expressed or intended to operate and can operate under this Act, is effectual to pass the land conveyed, or the easements, rights, privileges] or other interests [created, discharged from all the limitations, powers, and provisions of the settlement, and from all estates, interests, and charges subsisting or to arise thereunder, but subject to and with the exception of—

(i) all] legal [estates and charges] by way of legal mortgage [having priority to the settlement; and

(ii) all] legal [estates and charges] by way of legal mortgage [which have been conveyed or created for securing money actually raised at the date of the deed; and

(iii) all leases and grants at fee-farm rents or otherwise, and all grants of easements, rights of common, or other rights or privileges which—]

(a) [were before the date of the deed granted or made for value in money or money's worth, or agreed so to be, by the tenant for life] or statutory owner, [or by any of his predecessors in title, or any trustees for them, under the settlement, or under any statutory power, or are at that date otherwise binding on the successors in title of the tenant for life] or statutory owner; and

(b) are at the date of the deed protected by registration under the Land Charges Act, 1925, if capable of registration thereunder.

(3) Notwithstanding registration under the Land Charges Act, 1925, of—

(a) an annuity within the meaning of Part II. of that Act;

(b) a limited owner's charge or a general equitable charge within the meaning of that Act;

a disposition under this Act operates to overreach such annuity or charge which shall, according to its priority, take effect as if limited by the settlement.

(4) Where a lease is by this Act authorised to be made by writing under hand only, such writing shall have the same operation under this section as if it had been a deed.

Statutory owner.

It will be noticed that the "statutory owner," though referred to in paragraph (iii) of sub-sect. (2) of the section, is not mentioned in sub-sect. (1). There appears to be no doubt, however, that the powers by this section conferred on the tenant for life are equally exercisable by the statutory owner (*v*).

Differences between old and new sections.

Apart from the references in the new section, express or implied, to the "statutory owner," the main differences between the old section and the new section appear to be as follows:—

(1) "Partition, copyholds."

(1) The dispositions expressly mentioned in the old section included "partition" and dispositions affecting "copyhold or customary land vested in trustees," for which, of course, there is no place under the new law.

(2) Disposable interest.

(2) Under the old section the estate or interest which the tenant for life could dispose of was limited to "the estate or interest the subject of the settlement." Under the new section the limit is "the estate or interest vested or declared to be vested in him by the last or only vesting instrument affecting the settled land." The reason for this change is that, as we have seen (*w*), until a vesting deed has been executed vesting the settled land in the tenant for life, or declaring it to be so vested, he cannot exercise his statutory powers.

(3) "Overriding" estates and interests.

(3) The difference in the character of the estates, interests and charges, described in paragraphs (i), (ii) and (iii) of sub-sect. (2) of the respective sections, which could not be overridden by the tenant for life's conveyance. Taking them in order—

(i) In paragraph (i) of the old section the language is "All

(*v*) See the definition of "statutory owner," above, Part I., Chapter VII.; and see above, Part IV., Chapter I.

(*w*) S. L. Act, s. 13, above, Part IV., Chapter IV.

estates, interests and charges having priority to the settlement." It has been suggested that these words were surplusage, on the ground that a tenant for life could only convey "the estate or interest the subject of the settlement" (*x*). They draw attention, however, to what appears to be an essential difference between the old and the new systems of conveyancing. Under the old system it was competent for a tenant for life to convey subject to a charge, *e.g.*, a jointure rentcharge, subsisting under a settlement having priority to the settlement under which he was tenant for life; and this was frequently done, especially where the tenant for life was willing to give, and the purchaser to take, an indemnity against the overriding charge. Such a transaction, it seems, would be quite inadmissible under the new system; for in such a case there would be a compound settlement, which for the purposes of the Settled Land Act would be "the settlement," under which alone the tenant for life could exercise his powers (*y*). Consequently paragraph (i) of the new section includes only "legal estates" and "charges by way of legal mortgage" having priority to the settlement.

(ii) Similarly paragraph (ii) of the new section includes only "legal estates" and "charges by way of legal mortgage" conveyed or created for securing money actually raised, as contrasted with the language of paragraph (ii) of the old section, which is wide enough to include *equitable* estates, interests and charges so conveyed or created.

(iii) In paragraph (iii) the difference arises from the insertion in the new section of sub-clause (b) relating to registration under the Land Charges Act.

Registration under L. C. Act.

The subject of registration under that Act and the definitions in that Act of "annuity," "limited owner's charge," and "general equitable charge" will be considered hereafter in Part VI. of this volume.

In the Settled Land Act, as in the Property Act, references to registration under the Land Charges Act apply to any registration made under any statute which is by the Land Charges Act to have effect as if registration had been made under that Act (*z*).

(*x*) See *In re Davies and Kent's Contract*, (1910) 2 Ch. 35, at pp. 54, 57.
(*y*) See above, Part IV., Chapter II.
(*z*) Above, Part I., Chapter VII., p. 25.

Equitable interest protected by a deposit of documents.

It will be seen that this section does *not* exclude from the overriding operation of a conveyance by a tenant for life an "equitable interest protected by a deposit of documents relating to the legal estate affected"; though such an interest is excluded by sub-sect. (2) of sect. 21 of the Settled Land Act, and by sub-sect. (3) of sect. 2 of the Property Act. Sect. 13 of the latter Act expressly saves the "effect of possession of documents," and would, it is thought, apply to the case of a sale by a tenant for life who could not produce the title deeds, nor give such an explanation of their absence as would protect a purchaser.

CHAPTER VI.

INVESTMENT OR OTHER APPLICATION OF CAPITAL MONEY.

Section i.—*Introductory.*

S. L. Act, Part III., ss. 73 to 82.

Subject matter.

THIS subject is dealt with in Part III. of the Act, comprising sects. 73 to 82, whereof some are re-enactments, with or without modification, of repealed enactments, and the rest are new.

"Capital money."

In the Settled Land Act "capital money arising under this Act" means capital money arising under the powers and provisions of *this Act or the Acts replaced by this Act*, and receivable for the trusts and purposes of the settlement, and includes securities representing capital money. It will be seen that the expression includes capital money arising under the provisions of the repealed Acts. Hence the provisions of the Act in regard to capital money will apply to *all* capital money, independently of the time when it arose.

Section ii.—*Re-enactments.*

S. L. Act, s. 73. "Modes of investment or application." Subs. (1).

Sub-sect. (i) of sect. 73 of the Act, replacing sect. 21 of the Act of 1882, provides that, subject as therein mentioned, capital money shall, when received, be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of the several modes specified in the twenty-one sub-sections of the new section.

Authorised modes re-enacted.

These modes include all those specified in sect. 21 of the Act of 1882 (*a*), also modes authorised by sub-sections of the new section which replace enactments repealed by the new Act (*b*), namely, sub-sects. (ii) (part of) and (iv), replacing sect. 21 of

(*a*) Except payment for equality of partition and the purchase of a seigniory or of the fee simple of copyhold or customary land.
(*b*) S. L. Act, s. 119, and Fifth Schedule.

the Agricultural Holdings Act, 1923, and sub-sect. (xvi), replacing sect. 2 of the Tithes Apportionment Act, 1921.

New modes.

The new authorised modes for applying capital money are as follows:—

By sub-sects. (vi) to (ix), in making various payments arising out of the enfranchisement of copyhold land or the conversion of a perpetually renewable leasehold interest into a long term;

By sub-sect. (xiii), in redemption of an "improvement rentcharge," that is to say, a rentcharge (temporary or permanent) created, whether before or after the commencement of the Act, in pursuance of any Act of Parliament (*c*), with the object of paying off any money advanced for defraying the expenses of an improvement of any kind authorised by Part I. of the Third Schedule to the Act (*d*);

By sub-sect. (xiv), in the purchase, with the leave of the Court, of any such leasehold interest as therein mentioned;

By sub-sect. (xv), in payment of various costs and expenses incurred in connection with the making of, or in opposing, any improvement or development scheme affecting the settled land, or any part thereof, including schemes under the Town Planning Act, 1925;

By sub-sect. (xvii), in payment to a local or other authority of an agreed sum in consideration of the authority taking over and becoming liable to repair a private road on the settled land or a road for the maintenance whereof a tenant for life is liable *ratione tenuræ* (*e*); and

By sub-sect. (xviii), in financing, as therein mentioned, any person who may have agreed to take a lease or grant for building purposes of the settled land, or any part thereof.

Subs. (2). Purchase of land out of England and Wales.

Sub-sect. (2) of sect. 73 of the Act re-enacts sect. 23 of the Act of 1882.

(*c*) *E.g.*, the Improvement of Land Act, 1864.
(*d*) See below, p. 335.
(*e*) This could not be done under the Act of 1882; see *In re Hodgson's Settled Estate*, (1912) 1 Ch. 784.

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Sect. 75 of the Act re-enacts almost *verbatim* sect. 22 of the Act of 1882, and sect. 14 of the Act of 1890.

S. L. Act, s. 75. "Regulations respecting investment, devolution, and income of securities, &c."

Sect. 76 of the Act re-enacts sect. 32 of the Act of 1882 without modification, except that "Act" is extended to include "an order or scheme confirmed by or having the force of an Act of Parliament," and that the reference to the Settled Estates Act, 1877 (*f*), is omitted.

S. L. Act, s. 76. "Application of money in Court under Lands Clauses and other Acts."

Sect. 79 of the Act re-enacts sect. 34 of the Act of 1882, the only difference being that the new section omits the reference to a lease for "life or years determinable on life."

S. L. Act, s. 79. "Application of money paid for lease or reversion."

The reason for the omission is that, since the commencement of the Property Act, such a lease operates as a lease for a term of ninety years determinable in certain events (*g*).

Lease for life, &c.

S. L. Act, s. 82. "Land acquired may be made a substituted security for released charges."

Sect. 82 of the Act re-enacts sub-sects. (4) (5) and (6) of sect. 24 of the Act of 1882 with some modifications, of which the principal is that the words "in respect of money actually raised, and remaining unpaid," which qualify "any charge" in sub-sect. (4) of the repealed section, are omitted in sub-sect. (1) of the new section (*h*).

Section iii.—*New Enactments.*

(a) *Acquisition of land subject to Crown rents, &c.*

S. L. Act, s. 74. "Power to acquire land subject to certain incumbrances."

Sect. 74 of the Act provides, by sub-sect. (1), that land may be acquired on a purchase or exchange, notwithstanding that it is subject to any Crown rent, quit rent, chief rent, or other incident of tenure, or to any easement, right, or privilege, or to any restrictive covenant, or to any liability to maintain or repair walls, fences, &c., or to any "improvement rentcharge" (*i*);

(*f*) Repealed, S. L. Act, s. 119, and Fifth Schedule.
(*g*) Above, Part II., Chapter IV., p. 95.
(*h*) Sub-sects. (1), (2) and (3) of the repealed section, which prescribe the modes of assuring land acquired by purchase or in exchange, are superseded by sect. 10 of the Act, above, Part IV., Chapter IV., p. 295. Sub-sect. (7) of the repealed section is rendered unnecessary by the definition of "land" in the S. L. Act: see Table of Definitions, above, Part I., Chapter VII.
(*i*) Above, p. 331.

and by sub-sect. (2) confirms the acquisition on a purchase or exchange before the commencement of the Act of any land subject to any such burden.

Subs. (2). Confirmation of past transactions.

(b) *Money applicable as capital money.*

Sects. 77, 78 (*k*), 80 and 81 of the Act all deal with the question of money applicable as capital money.

S. L. Act, ss. 77, 78, 80, 81.

Sect. 77 of the Act provides that, where under any instrument (a) coming into operation *either before or after the commencement of the Act,* money is in the hands of trustees and is liable to be laid out in the purchase of land to be made subject to the trusts declared by that instrument, or (b) coming into operation *after the commencement of the Act,* money or securities or the proceeds of sale of any property is or are held by trustees on trusts creating entailed interests therein, then, in addition to such powers of dealing therewith as the trustees have independently of the Act, they may, at the option of the tenant for life, invest or apply the money, securities or proceeds as if they were capital money arising under the Act.

S. L. Act, s. 77. "Application of money in hands of trustees under powers of settlement."

There may be an "entailed interest" in pure personalty (*l*), but the reference in this section to the "tenant for life" suggests that case (b) applies only where there is a person entitled in possession to an entailed interest in the money, securities or proceeds, and empowered to require the same to be invested in the purchase of land, of which, when purchased, he would be tenant for life within the meaning of the Act.

Entailed interests.

Sect. 80 of the Act, in cases to which that section applies (*m*), provides that money not being rent (that is, presumably, what is known as a penal rent, *e.g.*, for converting pasture into arable) received by way of damages or compensation for a breach of any covenant by a lessee or grantee contained in a lease or grant of settled land shall, unless the Court otherwise directs, be deemed to be capital money and be dealt with accordingly (*n*).

S. L. Act, s. 80. "As to money received by way of damages for breach of covenant." Subs. (1). Damages to be capital money, unless otherwise directed.

(*k*) For this section, see above, Part IV., Chapter IV., p. 298.
(*l*) L. P. Act, s. 130, above, Part III., Chapter IX.
(*m*) See S. L. Act, s. 80 (4), (5) and (6).
(*n*) S. L. Act, s. 80 (1). This alters the law as laid down in *In re Lacon's Settlement,* (1911) 2 Ch. 17.

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Subss. (2) and (3). Application of money received.

Money so received, or any part thereof, may, if the circumstances permit, be applied, within a limited period, in or towards payment of the costs of making good the breach or the consequences thereof, in whole or in part, and the trustees of the settlement may require it to be so applied (*o*), and the work required to be done for the purpose is to be deemed an improvement authorised by Part I. of the Third Schedule to the Act (*p*).

S. L. Act, s. 81. "As to capital money arising otherwise than under the Act."

Sect. 81 of the Act provides, in effect, that any money arising from settled land, whether before or after the commencement of the Act, (1) otherwise than under the Acts or Act for the time being in force, and (2) which ought, as between the persons interested in the settled land, to be or to have been treated as capital, or, in the case of any such money so arising before the commencement of the Act, the money or securities in the names or under the control of the tenant for life or the trustees of the settlement representing the same, shall (without prejudice to any other statutory provisions affecting the same) be deemed to be or to represent capital money arising under the Act and be dealt with accordingly.

Application of the section.

The section leaves open the question what money, arising as therein mentioned, "ought, as between the persons interested in the settled land, to be or to have been treated as capital" (*q*). It is thought that the section will not apply to money so arising before the commencement of the Act, which, by reason of its having been received by the tenant for life or otherwise, is not, at such commencement, represented by money or securities in the names or under the control of the tenant for life or the trustees of the settlement.

How far it alters the law.

It seems doubtful whether, except as mentioned in the note (*q*), the section is intended to alter the law, or whether it affects the decisions as to "casual profits" (*r*).

(*o*) S. L. Act, s. 80 (2).
(*p*) *Ibid.* (3); see below, p. 335.
(*q*) This question is affected by the fiduciary position of the tenant for life: see *In re Rodes*, (1909) 1 Ch. 815. Such money was not capital money under the repealed Acts: see *In re Lacon*, (1911) 2 Ch. 17, 23.
(*r*) See, *e.g.*, *In re Williams' Settlement*, (1922) 2 Ch. 750.

CHAPTER VII.

IMPROVEMENTS.

Section i.—*Introductory.*

Part IV. of the Act deals with the subject of "Improvements" and comprises sects. 83 to 89, whereof sects. 83 to 85 relate to "Improvements with capital money," and sects. 86 to 89 contain "Sundry provisions as to improvements."

S. L. Act, Part IV. Subject matter.

Section ii.—*Improvements with Capital Money.*

(a) *Re-enactments.*

Sect. 83 of the Act re-enacts sect. 25 of the Act of 1882, except (1) that the "works" and "purposes," instead of being specified in the section itself, as they are in the repealed section, are set out in the Third Schedule to the Act; and (2) that the works and purposes specified in that Schedule are not confined to those specified in the repealed section, and are classified as hereinafter mentioned.

S. L. Act, s. 83. "Description of improvements authorised by Act.

The Third Schedule to the Act is divided into three Parts.

S. L. Act, 3rd Sched. Division into Parts.

Part I. specifies "Improvements, the costs of which are not liable to be replaced by instalments." The improvements specified in this Part of the Schedule are identical with those specified respectively in sect. 25 of the Act of 1882, sect. 13 of the Act of 1890, and sect. 7 (*a*) of the Housing, Town Planning, &c. Act, 1909.

Part I.

Part II. specifies "Improvements, the costs of which the trustees of the settlement *or* (*b*) the Court *may* (*b*) require to be replaced by instalments."

Part II.

(*a*) Repealed, S. L. Act, s. 119, and Fifth Schedule.
(*b*) The *italics* are the writer's.

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Part III.

Part III. specifies "Improvements, the costs of which the trustees of the settlement *and* (*b*) the Court *must* (*b*) require to be replaced by instalments."

S. L. Act, 1882, s. 30.

As we have seen (*c*), sect. 30 of the Act of 1882, relating to the Improvement of Land Act, 1864, is not repealed.

S. L. Act, s. 84. "Mode of application of capital money."

Sub-sects. (1) and (2) of this section re-enact sub-sects. (1) and (2) of sect. 26 of the Act of 1882, with some modifications. Thus, by sub-sect. (1), capital money may be applied in improvements without any scheme being first submitted for approval; and, by sub-sect. (2), a certificate of a competent engineer or able practical surveyor employed independently of the tenant for life is substituted for a certificate by, or approved by, "the Commissioners."

Capital money in Court.

Sub-sect. (3) re-enacts sub-sect. (3) of sect. 26 of the Act of 1882, with the substitution of "the Minister" for "the Commissioners."

Payment by instalments.

The proviso to sub-sect. (2) of sect. 84, and sub-sects. (4) and (5) of that section, contain provisions applicable where the capital money applied in an improvement is repayable by instalments.

S. L. Act, s. 85. "Creation of rentcharges to discharge instalments."

Sect. 85 provides for the creation out of the settled land, or any part thereof, of a yearly rentcharge in favour of the trustees of the settlement sufficient to discharge the instalments of capital money so repayable.

Sub-sect. (3) of this section is as follows:—

Overreaching and cesser of rentcharge.

(3) A rentcharge created by or under this section shall not be redeemed out of capital money, but may be overreached in like manner as if the same were limited by the settlement, and shall cease if and when the land affected by the improvement ceases to be settled or is sold or exchanged, but if part of the land so affected remains subject to the settlement the rentcharge shall remain in force in regard to the settled land.

(*b*) The *italics* are the writer's.
(*c*) Above, Part I., Chapter III., p. 18.

Section iii.—*Sundry Provisions as to Improvements.*

S. L. Act, s. 86. "Concurrence in improvements."

Sect. 86 of the Act re-enacts *verbatim* sect. 27 of the Act of 1882.

S. L. Act, s. 87. "Court may order payment for improvements executed."

Sect. 87 of the Act re-enacts sect. 15 of the Act of 1890 without modification, except that it extends the re-enacted provisions to improvements authorised by the new Act, and adds the words "and notwithstanding that no capital money is immediately available for the purpose" (*d*).

S. L. Act, s. 88. "Obligation on tenant for life and successors to maintain, insure, &c."

Sub-sects. (1) to (5) of sect. 88 of the Act re-enact sect. 28 of the Act of 1882, with the modifications that it substitutes "the trust instrument" for "the settlement," and "the Minister" for "the Land Commissioners," and makes the re-enacted provisions apply to all improvements.

Improvement rentcharge.

Sub-sect. (6) provides that where, in connection with any improvement, an "improvement rentcharge" (*e*) has been created and that rentcharge has been redeemed out of capital money, this section shall apply to the improvement as if it had been an improvement executed under the new Act.

"Trust Instrument."

The reason for the substitution of "trust instrument" for "settlement" is that under the prescribed mode of effecting settlements by a trust instrument and a vesting deed (*f*), it is the former which defines the beneficial interests of the persons entitled under the settlement.

S. L. Act, s. 89. "Protection as regards waste in execution and repair of improvements."

Sect. 89 of the Act re-enacts sect. 29 of the Act of 1882, with the substitution of "trust instrument" for "settlement."

(*d*) Under the repealed section the Court would not make a prospective order directing payment for an improvement out of future capital money: *In re Marquis of Bristol's Settled Estates*, (1893) 3 Ch. 161.

(*e*) Above, p. 331. (*f*) Above, p. 277.

CHAPTER VIII.

MISCELLANEOUS PROVISIONS.

S. L. Act, Part V. Subject matter.

PART V. of the Act contains "Miscellaneous Provisions" and comprises sects. 90 to 93.

(a) *Re-enactments.*

S. L. Act, s. 90. "Power for tenant for life to enter into contracts."

Sub-sects. (1) to (4) of sect. 90 of the Act re-enact, with some modifications, the corresponding sub-sections of sect. 31 of the Act of 1882.

Capital money.

Sub-sect. (5) provides that all money, not being rent, received on the exercise by the tenant for life or statutory owner of the powers conferred by sub-sect. (1) shall, unless the Court, as therein mentioned, otherwise directs, be capital money arising under the Act.

S. L. Act, s. 92. "Proceedings for protection or recovery of land settled or claimed as settled."

Sect. 92 of the Act re-enacts *verbatim* sect. 36 of the Act of 1882.

S. L. Act, s. 93. Reference of questions to Court. [S. L. Act, 1882, s. 44.]

Sect. 93 of the Act is as follows:—

93. If a question arises or a doubt is entertained—

(a) [respecting the exercise] or intended exercise [of any of the powers conferred by this Act,] or any enactment replaced by this Act, or the settlement, [or any matter relating thereto;] or

(b) as to the person in whose favour a vesting deed or assent ought to be executed, or as to the contents thereof; or

(c) otherwise in relation to property subject to a settlement;

[the tenant for life] or statutory owner, [or the trustees of the settlement,] or any other person interested under the settlement, [may apply to the Court] for its decision or directions thereon, or for the sanction of the Court to any conditional contract, [and the Court may] make such order or [give such directions respecting the matter as the Court thinks fit].

(b) *New Enactment.*

S. L. Act, s. 91. "Provisions as to different estates settled upon the same limitations."

Sect. 91 of the Act contains, in sub-sect. (1), provisions applicable where "estates" (*a*) are settled by different settlements upon the same limitations, whether by reference or otherwise.

"Same limitations."

By sub-sect. (2) estates are to be deemed to be settled upon the same limitations, notwithstanding that any of them may be subject to incumbrances, charges, or powers of charging to which the other or others of them may not be subject, but in any such case the powers of the section relating to the payment or application of capital money shall not, unless the settlement under which the capital money is held otherwise provides, be exercisable without an order of the Court.

Saving.

Sub-sect. (3) saves certain orders of the Court made before the commencement of the Act and the power of the Court to make like orders after such commencement.

(*a*) In this section "estate" means the land, capital money, and securities representing capital money for the time being subject to a particular settlement. (Sub-sect. (4).)

CHAPTER IX.

GENERAL PROVISIONS AS TO TRUSTEES.

Section i.—*Introductory.*

S. L. Act, Part VI. Subject matter.

PART VI. of the Act contains "General Provisions as to Trustees" and comprises sects. 94 to 102.

Ss. 94, 95, 101.

Of these, sects. 94 ("Number of trustees to act"), 95 ("Trustees' receipts"), and 101 ("Notice to trustees") are considered hereafter in connection with § 2 ("Powers of sale under Settled Land Acts") of Chapter IX. of the Treatise, which Chapter treats "Of Title under the Exercise of Powers" (*a*).

Section ii.—*Protection of Trustees.*

(a) *Re-enactments.*

S. L. Act, ss. 96, 97, 100.

Sects. 96 ("Protection of each trustee individually"), 97 ("Protection of trustees generally"), and 100 ("Trustees' reimbursements") re-enact respectively (with some slight modifications in sect. 97) sects. 41, 42, and 43 of the Act of 1882.

(b) *New Enactments.*

S. L. Act, s. 98. "Protection of trustees in particular cases."

(1) On making investments.

Sub-sects. (1) and (2) of sect. 98 (*b*) of the Act respectively contain provisions protecting the trustees of the settlement (1) from certain liabilities where the tenant for life or statutory owner directs capital to be invested on any authorised

(*a*) Below, Part IX., Section IX.

(*b*) This section applies to dealings and matters effected before as well as after the commencement of the Act. (Sub-sect. (4).)

security or investment, and (2) from liability for paying or applying any capital money by the direction of the tenant for life or statutory owner for any authorised purpose.

(2) On paying or applying capital money.

Sub-sect. (3) is as follows:—

(3) The trustees of the settlement shall not be liable in any way on account of any vesting instrument or other documents of title relating to the settled land, other than securities for capital money, being placed in the possession of the tenant for life or statutory owner:

(3) In respect of title deeds.

Provided that where, if the settlement were not disclosed, it would appear that the tenant for life had a general power of appointment over, or was absolutely and beneficially entitled to the settled land, the trustees of the settlement shall, before they deliver the documents to him, require that notice of the last or only principal vesting instrument be written on one of the documents under which the tenant for life acquired his title, and may, if the documents are not in their possession, require such notice to be written as aforesaid, but, in the latter case, they shall not be liable in any way for not requiring the notice to be written.

It will be noticed that the first part of the proviso is imperative, namely, where the documents are in the possession of the trustees; and the second part is permissive, namely, where the documents are not in their possession.

Sect. 99 of the Act is as follows:—

S. L. Act, s. 99. Indemnities to personal representatives and others.

99. Personal representatives, trustees, or other persons who have in good faith, pursuant to this Act, executed a vesting deed, assent, or other conveyance of the settled land, or a deed of discharge of trustees, shall be absolutely discharged from all liability in respect of the equitable interests and powers taking effect under the settlement, and shall be entitled to be kept indemnified at the cost of the trust estate from all liabilities affecting the settled land, but the person to whom the settled land is conveyed (not being a purchaser taking free therefrom) shall hold the settled land upon the trusts, if any, affecting the same.

Section iii.—*Management of Land by Trustees.*

S. L. Act, s. 102. "Management of land during minority or

Sub-sects. (1), (2), (3) and (6) of sect. 102 of the Act re-enact respectively (as regards sub-sects. (1) and (6), with some

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pending contingency."

modifications) sub-sects. (1), (2), (3) and (7) (*c*) of sect. 42 of the Conveyancing Act, 1881, as amended by sect. 14 (*c*) of the Conveyancing Act, 1911.

Repeals and re-enactments.

Sub-sects. (4) and (5) of sect. 42 are repealed by the Trustee Act (*d*), and replaced by sect. 31 of the latter Act, but the last-mentioned section does not apply where the instrument, if any, under which the interest arises came into operation before the commencement of the Trustee Act (*e*). Sect. 43 of the Conveyancing Act, 1881, is still in force in regard to instruments coming into operation before such commencement (*f*).

New enactments.

Sub-sects. (4) and (5) of sect. 102 are new, and provide as follows:—

(4) This section has effect subject to an express appointment by the settlement, or the Court, of trustees for the purposes of this section or of any enactment replaced by this section.

(5) Where any person is contingently entitled to land, this section shall, subject to any prior interests or charges affecting that land, apply until his interest vests, or, if his interest vests during his minority, until he attains the age of twenty-one years.

This subsection applies only where a person becomes contingently entitled under an instrument coming into operation after the commencement of this Act.

Subs. (5). Person contingently entitled.

It will be remembered that the Settled Land Act extends the definition of "settled land" to include land which, after the commencement of the Act, stands for the time being limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event (*g*).

Who are management trustees.

From sub-sect. (1) of sect. 102 it appears that the trustees who have power to enter and manage *during the minority or pending the contingency* are (i) the trustees (if any) appointed for the purpose by the settlement, or, if there are none so appointed, then (ii) the trustees of the settlement, or, if there

(*c*) Repealed, S. L. Act, s. 119, and Fifth Schedule.
(*d*) T. Act, s. 70, and Second Schedule.
(*e*) T. Act, s. 31 (5).
(*f*) Above, Part I., Chapter III., p. 17.
(*g*) S. L. Act, ss. 1 (1) (iii) and 2, above, Part IV., Chapter II., p. 258.

Statutory owner.

Concurrent powers.

are none, (iii) any persons appointed as trustees for the purpose by the Court. When, therefore, the management trustees are the trustees of the settlement, they will, as the "statutory owner," have the powers of a tenant for life (*h*) in addition to their powers under this section; when they are not, there will, it seems, be two sets of trustees with concurrent, and possibly conflicting, powers.

(*h*) Above, Part IV., Chapter I.

CHAPTER X.

PROTECTION OF PURCHASERS, &c.

Section i.—*Introductory.*

S. L. Act, Part VII. Subject matter.

PART VII. of the Act comprises sects. 103 to 112, grouped under the heading "Restrictions, Savings, and Protection of Purchasers." Of these sections, sect. 110 contains provisions for the "Protection of Purchasers" and merits separate treatment.

Section ii.—*Protection of Purchasers* (*a*).

S. L. Act, s. 110. "Protection of purchasers, &c."

Sect. 110 of the Act contains four sub-sections which, though to a certain extent *in pari materia*, appear to be mutually independent.

Subs. (i). *Bona fide* purchaser.

Sub-sect. (1) re-enacts, for the benefit of "a purchaser dealing in good faith with a tenant for life or statutory owner," the provisions of sect. 54 of the Act of 1882.

Subs. (2) to (4). Purchaser of legal estate in settled land.

Sub-sects. (2) to (4) contain provisions intended to protect "a purchaser of a legal estate in settled land."

Subs. (2). Restrictions on purchaser.

Sub-sect. (2), apart from the proviso to that sub-section, which is referred to by the words "except as hereby expressly provided," and the words "save as hereinafter provided," is as follows:—

> (2) A purchaser of a legal estate in settled land shall not, except as hereby expressly provided, be bound or entitled to call for the production of the trust instrument or any information concerning that instrument or any ad valorem stamp duty thereon, and whether or not he has notice of its contents he shall, save as hereinafter

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(*a*) For the meaning of "purchaser" in the S. L. Act, see Table of Definitions, above, Part I., Chapter VII.

provided, be bound and entitled if the last or only principal vesting instrument contains the statements and particulars required by this Act to assume that—

(a) the person in whom the land is by the said instrument vested or declared to be vested is the tenant for life or statutory owner and has all the powers of a tenant for life under this Act, including such additional or larger powers, if any, as are therein mentioned;

(b) the persons by the said instrument stated to be the trustees of the settlement, or their successors appearing to be duly appointed, are the properly constituted trustees of the settlement;

(c) the statements and particulars required by this Act and contained (expressly or by reference) in the said instrument were correct at the date thereof;

(d) the statements contained in any deed executed in accordance with this Act declaring who are the trustees of the settlement for the purposes of this Act are correct;

(e) the statements contained in any deed of discharge, executed in accordance with this Act, are correct.

It will be seen that by this sub-section, apart from the references to the proviso, two restrictions are imposed on the purchaser:—(1) He is not bound or entitled to call for the production of the trust instrument (*b*) or any information concerning that instrument or any *ad valorem* stamp duty thereon; and (2), whether or not he has notice of its contents, he is bound and entitled to make the assumptions specified in paragraphs (a) to (e).

The latter restriction arises, however, if, and only if, the last or only principal vesting instrument contains the statements and particulars required by the Act (*b*).

Proviso to subs. (2). Vesting instrument, when not conclusive.

The proviso to sub-sect. (2) is as follows:—

Provided that, as regards the first vesting instrument executed for the purpose of giving effect to—

(a) a settlement subsisting at the commencement of this Act; or

(b) an instrument which by virtue of this Act is deemed to be a settlement; or

(c) a settlement which by virtue of this Act is deemed to have been made by any person after the commencement of this Act; or

(*b*) S. L. Act, ss. 4, 5, above, Part IV., Chapter IV.

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(d) an instrument inter vivos intended to create a settlement of a legal estate in land which is executed after the commencement of this Act and does not comply with the requirements of this Act with respect to the method of effecting such a settlement;

a purchaser shall be concerned to see—

(i) that the land disposed of to him is comprised in such settlement or instrument;

(ii) that the person in whom the settled land is by such vesting instrument vested, or declared to be vested, is the person in whom it ought to be vested as tenant for life or statutory owner;

(iii) that the persons thereby stated to be the trustees of the settlement are the properly constituted trustees of the settlement.

Application of proviso.

The proviso applies only to the *first* vesting instrument executed for the purpose of giving effect to any of the instruments specified respectively in paragraphs (a) to (d).

"Vesting instrument."

The proviso will apply whether the first vesting instrument takes the form of a vesting deed, a vesting assent, or a vesting order (*c*).

Para. (a). Subsisting settlement.

As we have seen (*d*), "a settlement subsisting at the commencement of this Act" includes a settlement created by virtue of the Act immediately on the commencement thereof.

Para. (b.) "Deemed to be a settlement."

Enumeration whether exhaustive.

The reference in paragraph (b) is not quite clear, but, on the whole, it is thought that it must *include* every instrument which, by virtue of sect. 1 (1) of the Act (*e*), creates or is a settlement. If so, the enumeration of the instruments comprised in paragraphs (a) to (d) appears to exhaust every case where a vesting instrument *first* becomes necessary and is executed after the commencement of the Act.

Para. (c).

Illustrations of settlements "deemed to have been made" are afforded by sub-sects. (2) and (3) of sect. 1 of the Act (*e*).

Subs. (3). Purchase from personal representatives.

Sub-sect. (3) is as follows:—

(3) A purchaser of a legal estate in settled land from a personal representative shall be entitled to act on the following assumptions:—

(i) If the capital money, if any, payable in respect of the

(*c*) See definition of "vesting instrument," above, Part I., Chapter VII. (*d*) Above, Part IV., Chapter IV.
(*e*) Above, Part IV., Chapter II.

transaction is paid to the personal representative, that such representative is acting under his statutory or other powers and requires the money for purposes of administration;

(ii) If such capital money is, by the direction of the personal representative, paid to persons who are stated to be the trustees of a settlement, that such persons are the duly constituted trustees of the settlement for the purposes of this Act, and that the personal representative is acting under his statutory powers during a minority;

(iii) In any other case, that the personal representative is acting under his statutory or other powers.

Assumptions not obligatory.

It will be noticed that, in these cases, the purchaser is *entitled* to act upon the specified assumptions and not expressly bound to do so, though, in practice, it will, no doubt, amount to the same thing.

Para. (i). "Purposes of administration."

It is thought that, in regard to settled land, the only "purposes of administration" for which money could be required would be the payment of death duties.

Para. (ii). Statutory powers during a minority.

The reference in paragraph (ii) appears to be to sub-sect. (2) of sect. 26 of the Act (*f*).

Para. (iii). "Any other case."

"Any other case" in paragraph (iii) apparently means any case in which capital money is not paid either to the personal representative or, by his direction, to persons stated to be the trustees of a settlement. As "purchaser" includes "lessee," this paragraph may include the case where a personal representative, acting, or purporting to act, in exercise of the powers conferred on him during a minority by sub-sect. (1) (a) of sect. 26 (*f*), grants a lease of the settled land, or of some part thereof, without taking a fine or other capital money.

Subs. (4).

Sub-sect. (4) is as follows:—

Transaction where no capital money arises.

(4) Where no capital money arises under a transaction, a disposition by a tenant for life or statutory owner shall, in favour of a purchaser of a legal estate, have effect under this Act notwithstanding that at the date of the transaction there are no trustees of the settlement.

This is a useful provision and will, for example, enable a lessee who takes a lease from a tenant for life or statutory

(*f*) Above, Part IV., Chapter I.

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owner, without paying a fine or other capital money, to do so without being concerned to enquire whether or not there are trustees of the settlement.

Subs. (5). Conveyance or assent not specifying trustees of settlement.

Sub-sect. (5) has already been referred to and in part set out in connection with the analysis of the abstract or epitome of title, which is Specimen No. 1 in the Sixth Schedule to the Property Act (*g*). The sub-section is as follows:—

> (5) If a conveyance of or an assent relating to land formerly subject to a vesting instrument does not state who are the trustees of the settlement for the purposes of this Act, a purchaser of a legal estate shall be bound and entitled to act on the assumption that the person in whom the land was thereby vested was entitled to the land free from all limitations, powers, and charges taking effect under that settlement, absolutely and beneficially, or, if so expressed in the conveyance or assent, as personal representative, or trustee for sale or otherwise, and that every statement of fact in such conveyance or assent is correct.

Application of subs. (5).

It will be noticed that sub-sect. (5) applies only to a conveyance or assent relating to land "formerly subject to a vesting instrument." The vesting instrument will, therefore, necessarily form part of the title.

Effect of subss. (2) (3) and (5) on title to be deduced.

The assumptions which, by sub-sects. (2), (3) and (5) of this section, a purchaser is bound or authorised to make, will not, it is thought, in the absence of express stipulation to the contrary, deprive him of his right to a thirty years' title (*h*).

Example.

Thus, in Specimen No. 1, above referred to, the documents of title range backwards from the conveyance of the 10th June, 1928 (No. 9 (*i*)), to the vesting deed of the 20th January, 1926 (No. 6), which is "the first vesting deed executed for giving effect to a settlement subsisting at the commencement of the Act." The X. Company, therefore, must satisfy themselves as to the matters specified in paragraphs (i), (ii) and (iii) of the proviso to sub-sect. (2) (*k*), and for this purpose the title must go back to the probate of H. Jones's will

(*g*) Above, Part III., Chapter XII., p. 213.
(*h*) L. P. Act, s. 44 (1), above, p. 134.
(*i*) The numbers referred to are those by which the successive links in the chain of title are distinguished in the analysis; above, pp. 210 to 212.
(*k*) Above, p. 345.

(No. 3), and his seisin, unless required by the contract to be assumed, must be proved. This would, it is thought, have been necessary, apart from the non-conclusiveness of the vesting deed of the 20th January, 1926, because a title commencing with that deed would have been less than a thirty years' title.

Section iii.—*Other Enactments in Part VII.*

S. L. Act, ss. 103—109, 111, and 112.

Of the remaining sections in Part VII. of the Act, sects. 103 to 105 and 107 are considered hereafter in connection with § 2 ("Powers of sale under Settled Land Acts") of Chapter IX. of the Treatise, which Chapter treats "Of Title under the Exercise of Powers" (*l*), and sects. 108 and 109 have been considered already (*m*).

S. L. Act, s. 106. "Prohibition or limitation against exercise of powers void, and provision against forfeiture."

Sub-sects. (1) and (2) of sect. 106 re-enact sect. 51 of the Act of 1882 without modification, except that they extend the protection of the repealed section to a statutory owner and to the right of a tenant for life or statutory owner to require the settled land to be vested in him. Sub-sect. (3) re-enacts, and extends to a statutory owner, sect. 52 of the Act of 1882.

S. L. Act, s. 112. "Exercise of powers; limitation of provisions, &c."

Sect. 112 of the Act re-enacts, without material alteration, sub-sects. (2) and (3) of sect. 55 of the Act of 1882 (*n*).

Sect. 111 of the Act is new and provides as follows:—

S. L. Act, s. 111. Purchaser of beneficial interest of tenant for life to have remedies of a legal owner.

111. Where—

(a) at the commencement of this Act the legal beneficial interest of a tenant for life under a settlement is vested in a purchaser; or

(b) after the commencement of this Act a tenant for life conveys or deals with his beneficial interest in possession in favour of a purchaser, and the interest so conveyed or created would, but for the restrictions imposed by statute on the creation of legal estates, have been a legal interest;

the purchaser shall (without prejudice to the powers conferred by this Act on the tenant for life) have and may exercise all the same rights and remedies as he would have had or have been entitled to exer-

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(*l*) Below, Part IX., Section IX.
(*m*) Above, Part IV., Chapter III.
(*n*) Subsection (1) of the repealed section is not re-enacted, and would appear to have been unnecessary.

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cise if the interest had remained or been a legal interest and the reversion, if any, on any leases or tenancies derived out of the settled land had been vested in him:

Provided that, where the conveyance or dealing is effected after the commencement of this Act, the purchaser shall not be entitled to the possession of the documents of title relating to the settled land, but shall have the same rights with respect thereto as if the tenant for life had given to him a statutory acknowledgment of his right to production and delivery of copies thereof, and a statutory undertaking for the safe custody thereof.

The tenant for life shall not deliver any such documents to a purchaser of his beneficial interest, who is not also a purchaser of the whole of the settled land to which such documents relate.

Para. (b). Restrictions on creation of *legal* estates.

The restrictions referred to are, of course, those imposed by sect. 1 of the Property Act (*o*).

Proviso. Retention of documents of title.

A tenant for life, being a trustee for all parties interested (*p*), obviously should retain the documents of title relating to the settled land, unless and until, in exercise of his statutory powers, he conveys to a purchaser "the whole of the settled land to which such documents relate." It is thought that the words quoted mean "the whole of the settled land to which such documents relate, *for the whole estate therein which is the subject of the settlement.*"

(*o*) Above, Part III., Chapter I., p. 97.
(*p*) S. L. Act, s. 107 (1).

CHAPTER XI.

PARTS VIII. AND IX. OF THE ACT.

S. L. Act, Part VIII.

Part VIII. (headed "Court, Ministry of Agriculture and Fisheries: Procedure") of the Settled Land Act replaces Part XI. (headed "Court; Land Commissioners; Procedure") of the Act of 1882, and contains four sections (namely, 113 to 116), which re-enact respectively, with the substitution of "the Minister" (*a*) for "the Land Commissioners" (*b*), the substance of the following enactments, namely, sect. 46 (1), (8) (*c*), (10), (2), (3), (4), (5), and (6); sect. 47; sect. 48 (6); and sect. 49, contained in Part XI. of the Act of 1882.

Repeal of S. L. Act Rules, 1882.

The Settled Land Act Rules, 1882 (*d*), are annulled and replaced by the Rules of the Supreme Court (Law of Property and other Acts), 1925 (*e*).

Vesting orders, &c.

By sub-sect. (9) of sect. 113 of the Act the provisions of the Trustee Act relating to vesting orders and orders appointing a person to convey (*f*) are to apply to all vesting orders authorised to be made by the Settled Land Act.

S. L. Act, Part IX.

Part IX. ("Supplementary Provisions") of the Act contains four sections only, namely, sect. 117 ("Definitions") (*g*), sect. 118 ("Retrospective amendment of certain provisions of the Settled Land Acts") (*h*), sect. 119 ("Repeal, savings, and construction") (*i*), and sect. 120 ("Short title, commencement and extent") (*k*).

(*a*) See Table of Definitions, above, Part I., Chapter VII.
(*b*) See Treatise, Vol. I., p. 133, notes (*t*) and (*z*).
(*c*) As amended by the Palatine Court of Durham Act, 1889, s. 10, which is amended by S. L. Act, s. 119, and Fifth Schedule.
(*d*) Made under sub-sect. (7), not re-enacted, of sect. 46 of the S. L. Act, 1882.
(*e*) S. R. & O., 1925, No. 935/L. 22, dated September 22, 1925.
(*f*) Below, Part V.
(*g*) Above, Part I., Chapter VII.
(*h*) Above, Part I., Chapter VI.
(*i*) Above, Part I., Chapter III., Section v.
(*k*) Above, Part I., Chapter III., Sections i. and ii.

PART V.

The Trustee Act.

CHAPTER I.

REPEALS AND RE-ENACTMENTS.

THE Trustee Act (in this Part sometimes referred to as "the Act" or "the new Act") repeals (*a*) the Trustee Act, 1893 (in this Part sometimes referred to as "the Act of 1893"), and other enactments *in pari materia* (*b*), and re-enacts, with or without amendment, several of the repealed enactments, as appears by the following Table:—

Marginal note to repealed enactment.	Repealed enactment.	Substituted enactment in T. Act.
Authorised investments	T. Act, 1893, s. 1	Sect. 1 (1)
Purchase at a premium of redeemable stocks.	s. 2	Sect. 2
Discretion of trustees	s. 3	Sect. 3
Application of preceding sections	s. 4	Not re-enacted.
Enlargement of express powers of investment.	s. 5	Sect. 5 (1) (3) (4) (5) (6)
Power to invest, notwithstanding drainage charges.	s. 6	Sect. 6
Trustees not to convert inscribed stock into certificates to bearer.	s. 7	Not re-enacted.
Loans and investments by trustees not chargeable as breaches of trust.	s. 8	Sect. 8
Liability for loss by reason of improper investments.	s. 9	Sect. 9

(*a*) T. Act, s. 70, and Second Schedule.
(*b*) See above, p. 19.

Marginal note to repealed enactment.	Repealed enactment.	Substituted enactment in T. Act.
Power of appointing new trustees	T. Act, 1893, s. 10 (1)	Sect. 36 (1)
	(2)	Sect. 37 (1)
	(3)	Sect. 36 (7)
	(4)	(8)
	(5)	Not re-enacted.
	(6)	Not re-enacted.
Retirement of trustee	s. 11 (1)	Sect. 39 (1)
	(2)	(2)
	(3)	Not re-enacted.
	(4)	Not re-enacted.
Vesting of trust property in new or continuing trustees.	s. 12	Sect. 40 (1) (a), (2) (a), (4) (5) (6)
Power of trustee for sale to sell by auction, &c.	s. 13 (1)	Sect. 12 (1)
	(2)	Not re-enacted.
	(3)	Not re-enacted.
Power to sell subject to depreciatory conditions.	s. 14	Sect. 13
Power to sell under 37 & 38 Vict. c. 78.	s. 15	Not re-enacted.
Married woman as bare trustee may convey.	s. 16	Not re-enacted.
Power to authorise receipt of money by banker or solicitor.	s. 17 (1)	Sect. 23 (3) (a) (b)
	(2)	(c)
	(3)	
	(4)	
	(5)	Not re-enacted.
Power to insure building	s. 18 (1)	Sect. 19 (1)
	(2)	(2)
	(3)	Not re-enacted.
Power of trustees of renewable leaseholds to renew and raise money for the purpose.	s. 19	Not re-enacted.
Power of trustee to give receipts.	s. 20 (1)	Sect. 14 (1)
	(2)	Not re-enacted.
Power for executors and trustees to compound, &c.	s. 21 (1)	Sect. 15
	(2)	
	(3)	Not re-enacted.
	(4)	Not re-enacted.
Powers of two or more trustees..	s. 22 (1)	Sect. 18 (1)
	(2)	Not re-enacted.
Exoneration of trustees in respect of certain powers of attorney.	s. 23	Sect. 29
Implied indemnity of trustees ...	s. 24	Sect. 30
Power of the Court to appoint new trustees.	s. 25	Sect. 41 (1) (3) (4)

Marginal note to repealed enactment.	Repealed enactment.	Substituted enactment in T. Act.
Vesting orders as to land	T. Act, 1893, s. 26	Sect. 44
Orders as to contingent rights of unborn persons.	s. 27	Sect. 45
Vesting order in place of conveyance by infant mortgagee.	s. 28	Sect. 46
Vesting order in place of conveyance by heir, or devisee of heir, &c., or personal representative of mortgagee.	s. 29	Not re-enacted.
Vesting order consequential on judgment for sale or mortgage of land.	s. 30	Sect. 47
Vesting order consequential on judgment for specific performance, &c.	s. 31	Sect. 48
Effect of vesting order	s. 32	Sect. 49
Power to appoint person to convey.	s. 33	Sect. 50
Effect of vesting order as to copyhold.	s. 34	Not re-enacted.
Vesting orders as to stock and choses in action.	s. 35	Sect. 51
Persons entitled to apply for orders.	s. 36	Sect. 58
Powers of new trustee appointed by Court.	s. 37	Sect. 43
Power to charge costs on trust estate.	s. 38	Sect. 60
Trustees of charities	s. 39	Sect. 52
Orders made upon certain allegations to be conclusive evidence.	s. 40	Sect. 55
Application of vesting order to land out of England.	s. 41	Sect. 56
Payment into Court by trustees..	s. 42	Sect. 63
Power to give judgment in absence of a trustee.	s. 43	Sect. 59
Power to sanction sale of land or minerals separately.	s. 44 (*c*)	Sect. 12 (2)

(*c*) Sect. 44, as amended by sect. 3 of the T. Act, 1894, and also the amending section are repealed by the L. P. Act, s. 207, and Seventh Schedule, and replaced, as regards mortgagees, by sect. 92 of the last-mentioned Act.

Marginal note to repealed enactment.	Repealed enactment.	Substituted enactment in T. Act.
Power to make beneficiary indemnify for breach of trust.	T. Act, 1893, s. 45	Sect. 62
Jurisdiction of Palatine and County Courts.	s. 46	Sect. 67
Application to trustees under Settled Land Acts of provisions as to appointment of trustees.	s 47 (1)	Sect. 64 (1)
	(2)	Not re-enacted.
	(3)	Not re-enacted.
Trust estates not affected by trustee becoming a convict.	s. 48	Sect. 65
Indemnity	s. 49	Sect. 66
Definitions	s. 50	Sect. 68 (*d*).
Vendor not bound to see to the application of purchase-money.	L. P. Am. Act, 1859, s. 23	Not re-enacted (*e*).
As to liability of executor or administrator in respect of rents, covenants or agreements.	s. 27	Sect. 26
As to liability of executors, &c., in respect of rents, &c., in conveyances on rent-charge.	s. 28	
As to distribution of the assets of testator or intestate after notice given by executor or administrator.	s. 29	Sect. 27
[Application of income of land during minority.]	C. A., 1881, s. 42 (4) (5) ...	Not re-enacted (*f*).
[Debenture bonds payable to bearer.]	East India Unclaimed Stock Act, 1885, s. 23 (3)	Not re-enacted (*g*).
Amendment of 56 & 57 Vict. c. 53, s. 30.	T. Act, 1894, s. 1	Not re-enacted.
Liability of trustee in case of change of character of investment.	s. 4	Sect. 4
Jurisdiction of Court in cases of breach of trust.	Judicial Trustees Act, 1896, s. 3	Sect. 61

(*d*) See above, Part I., Chapter VII.

(*e*) Superseded by a series of enactments, and now by T. Act, s. 14.

(*f*) See S. L. Act, s. 102, above, Part IV., Chapter IX., Section iii.

(*g*) See T. Act, s. 7.

Marginal note to repealed enactment.	Repealed enactment.	Substituted enactment in T. Act.
Survivorship of trusts and powers	C. A., 1911,	
	s. 8 (1)	Sect. 18 (2)
	(2)	Not re-enacted.
	(3)	Not re-enacted.
	(4)	Sect. 18 (4)
	(5)	Not re-enacted.
Power to Bankruptcy Courts to appoint new trustee.	Deeds of Arrangement Act, 1914,	
	s. 18	Sect. 41 (2)
Power of trustees to invest in certain securities issued by local authorities.	Housing (Additional Powers) Act, 1919,	
	s. 9	Sect. 1 (1) (p)
Power of trustees to invest in securities of amalgamated companies.	The Railways Act, 1921,	
	s. 15 ..... (As to the words "the Trustee Act, 1893, and") (*h*).	Sect. 1 (2)

(*h*) As to the repeal of certain of the enactments of the Lunacy Acts, 1890 to 1922, see T. Act, s. 54, below, p. 387.

CHAPTER II.

CHANGES IN THE LAW.

Re-enactments with amendments.

SEVERAL of the enactments which, as appearing by the Table in Chapter I., are re-enacted by the Trustee Act, are so re-enacted with amendments.

New enactments.

Moreover, there is a considerable number of sections in the Act which embody wholly new enactments.

Outline of changes in the law.

Only an outline can be given of the more important of the changes in the law effected respectively by these amendments and new enactments, and it will be convenient to do so by a series of Chapters dealing successively with the various sections which are grouped in the Act under separate headings.

CHAPTER III.

INVESTMENTS (*a*).

Section i.—*Amendments.*

T. Act, s. 1. "Authorised investments." [T. Act, 1893, s. 1.]

Sect. 1 of the Act specifies the securities in which trust funds may be invested.

Restriction of range.

Sub-sect. (1) *restricts*, as from the commencement of the Act, the range of authorised investments by reason of the facts (1) that in the Trustee Act, as in the other Consolidation Acts in which the expression occurs (*b*), "United Kingdom" means Great Britain and *Northern* Ireland; and (2) that for the words "Great Britain or Ireland," wherever they occur in the repealed section (*c*), sub-sect. (1) of the new section substitutes "Great Britain." Moreover, by sub-sect. (2) (*b*), a railway or canal company in Northern Ireland, whose system is situate partly in Northern Ireland and partly in the Irish Free State, is not to be deemed a railway or canal company in Northern Ireland (*d*).

"United Kingdom."

Extension of range.

Sub-sect. (1) expressly *extends* the range of authorised investments by including any stock or securities issued in respect of any loan raised by the Government of Northern Ireland (*e*).

T. Act, s. 5. "Enlargement of powers of investment." [T. Act, 1893, s. 5.]

Sub-sect. (2) of sect. 5 of the Act provides that a trustee having power to invest in real securities may accept the security in the form of a charge by way of legal mortgage (*f*), and may,

(*a*) T. Act, Part I., ss. 1 to 11.
(*b*) See Table of Definitions, above, Part I., Chapter VII.
(*c*) Namely in paragraphs (b), (g), (h) and (l), re-enacted with the same lettering.
(*d*) See T. Act, s. 1 (1) (h).
(*e*) *Ibid.* (q). See sect. 33 of the Government of Ireland Act, 1920.
(*f*) L. P. Act, s. 87, above, Part III., Chapter III., Section iv., p. 117.

in exercise of the statutory power (*g*), convert an existing mortgage into a charge by way of legal mortgage.

Section ii.—*New Enactments.*

L. P. Act, s. 7. "Investment in bearer securities."

By sect. 7 a trustee may, unless expressly prohibited by the instrument creating the trust, retain or invest in "securities payable to bearer" (*h*), which, if not so payable, would have been "authorised investments" (*h*). A direction that investments shall be retained or made in the name of a trustee shall not, for the purposes of this sub-section (*i*), be deemed to be such an express prohibition as aforesaid.

Deposit with bank.

Securities to bearer retained or taken by a trustee (not being a "trust corporation" (*h*)) shall, until sold, be deposited by him for safe custody and collection of income with a banker or banking company (*i*), and he shall not be responsible for any loss incurred by reason of such deposit, and any sum payable in respect of such deposit and collection shall be paid out of the income of the trust property (*k*).

Where deposit necessary.

Presumably the obligation to deposit arises only where there is a *sole* trustee (not being a trust corporation), but this is not clear.

T. Act, s. 10. "Powers supplementary to powers of investment."

Sect. 10 of the Act, by sub-sects. (1) to (4), confers various powers, exercisable on the terms and conditions specified in those sub-sections respectively, and (*l*) subject to the consent of any person whose consent to a change of investment is required by law or by the instrument, if any, creating the trust, namely, (1) (*m*) power to trustees to lend money on any authorised security on the terms that the money shall not be called in during any period not exceeding seven years; (2) (*n*) power for trustees or a tenant for life or statutory owner to sell land for an estate in fee simple or for a term having at least 500 years to run on the terms that any part, not exceeding two-thirds, of the purchase-money shall remain on mort-

Subs. (1). To lend for a term certain.

Subs. (2). To leave part of purchase money on mortgage.

(*g*) L. P. Act, s. 87 (2), *ubi sup.*
(*h*) See Table of Definitions, above, Part I., Chapter VII.
(*i*) T. Act, s. 7 (1).
(*k*) *Ibid.* (2).
(*l*) T. Act, s. 10 (5).
(*m*) *Ibid.* (1).
(*n*) *Ibid.* (2).

Part V. Chap. III.

Subs. (3). To concur in reconstruction of company, &c.

gage (*o*); (3) (*p*) where any securities of a company are subject to a trust, power for the trustees to concur in any such scheme or arrangement as is mentioned in the sub-section, and to accept any securities of the reconstructed or purchasing or new company in lieu of or in exchange for all or any of the first-mentioned securities; and (4) (*q*) power for trustees to exercise, renounce, or sell any conditional or preferential right to subscribe for any securities in any company which is offered to the trustees in respect of any holding in the company.

T. Act, s. 11. "Power to deposit money at bank and to pay calls."

Sect. 11 empowers trustees (1) while an investment is being arranged or sought for, to pay any trust money into a bank to a deposit or other account, any interest payable in respect thereof being applicable as income; and (2) to apply capital money subject to a trust in payment of the calls on any shares subject to the same trust.

(*o*) See sub-sect. (6) as to where the lease or sale is made under the order of the Court.
(*p*) *Ibid.* (3).
(*q*) T. Act, s. 10 (4).

CHAPTER IV.

GENERAL POWERS OF TRUSTEES AND PERSONAL REPRESENTATIVES (*a*).

Definitions.

It may be useful to call attention here to the definitions of "trust" and "trustee" contained in the Trustee Act (*b*). It will be seen that "trustee," *where the context admits*, includes a personal representative; but it is not always easy to determine from the context whether any given enactment relative to a trustee, in which personal representatives are not expressly mentioned, applies also to a personal representative.

Section i.—*General Powers* (*c*).

(a) *Amendments.*

T. Act, s. 14. "Power of trustees to give receipts." [T. Act, 1893, s. 20.]

The general power to give receipts which is conferred on trustees by sub-sect. (1) (*d*) of sect. 14 (*e*) of the Act, is qualified as follows by sub-sect. (2) of the same section:—

Subs. (2). Restriction on receipts by sole trustee. 15 Geo. 5, c. 18.

(2) This section does not, except where the trustee is a trust corporation, enable a sole trustee to give a valid receipt for—

(a) the proceeds of sale or other capital money arising under a disposition on trust for sale of land;

(b) capital money arising under the Settled Land Act, 1925.

Para. (a). Disposition on trust for sale.

Paragraph (a) of this sub-section must be read in conjunction with sub-sect. (2) of sect. 27 of the Property Act (*f*), which provides that, notwithstanding anything to the contrary contained in a disposition on trust for sale or in the settle-

(*a*) T. Act, Part II., ss. 12 to 33.
(*b*) T. Act, s. 68 (17). See Table of Definitions, above, Part I., Chapter VII.
(*c*) T. Act, ss. 12 to 25.
(*d*) Re-enacting T. Act, 1893, s. 20 (1).
(*e*) This section applies notwithstanding anything to the contrary in the instrument, if any, creating the trust: see sub-sect. (3).
(*f*) Above, Part III., Chapter VII., p. 170.

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ment of the net proceeds, the proceeds of sale or other capital money arising under the disposition shall not be paid to or applied by the direction of fewer than two persons *as trustees of the disposition*, except where the trustee is a "trust corporation" (*g*).

Application of para. (a).

It is thought that paragraph (a) is referential to sub-sect. (2) of sect. 27 of the Property Act, and applies *only* where that subsection applies, namely, where there is both a disposition on trust for sale and a settlement of the net proceeds, and would not apply, for example, to a sole trustee (not being a trust corporation) of a deed of arrangement selling for the benefit of creditors under a trust for sale contained in the deed. It is submitted that such a deed is not "a disposition on trust for sale" (*h*).

Para. (b). Capital money under S. L. Act.

In like manner paragraph (b) appears to be referential to sub-sect. (1) of sect. 94 of the Settled Land Act, which provides that, notwithstanding anything in that Act, capital money arising under that Act shall not be paid to fewer than two persons *as trustees of a settlement*, unless the trustee is a trust corporation.

Capital money *as such*.

It is thought that the restriction imposed by sub-sect. (2) of sect. 14 of the Act applies to capital money *only as and when it arises*, and that where capital money *which has arisen* and been duly received, or a share thereof, is payable to a third party, *e.g.*, to the trustee of a derivative settlement, such trustee, although a sole trustee and not a trust corporation, could give a valid receipt for it, for he would not receive it as a trustee of the disposition on trust for sale or settlement under which it had arisen.

T. Act, s. 15. "Power to compound liabilities." [T. Act, 1893, s. 21.]

Sect. 15 of the Act gives certain powers to a personal representative, or to two or more trustees acting together, or, subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation (*i*), to a sole acting trustee, where by the instrument, if any, creating the trust, or by statute, a sole trustee is authorised to execute the trusts and

(*g*) See Table of Definitions, above, Part I., Chapter VII.
(*h*) This question has arisen in actual practice.
(*i*) That is, by T. Act, s. 14 (2), above, p. 361.

powers reposed in him, namely, (1) the power given by sub-sect. (1) of the repealed section to an executor or administrator to pay or allow any debt or claim on any evidence that he thinks sufficient; (2) the powers given by sub-sect. (2) of the same section to an executor or administrator, or to two or more trustees, acting together, or to a sole acting trustee where by the instrument, if any, creating the trust a sole trustee is authorised to execute the trusts and powers thereof; and (3) the following further powers, namely, (a) to accept any property, real or personal, before the time at which it is made payable or transferable, and (b) to sever and apportion any blended trust funds or property.

T. Act, s. 18. "Devolution of powers or trusts." [T. Act, 1893, s. 22 (1); C. A. 1911, s. 8 (1); C. A. 1911, s. 8 (4)].

Sect. 18 of the Act, whereof sub-sects. (1), (2) and (4) re-enact respectively the enactments bracketed in the margin, with the addition at the end of sub-sect. (2) of the words "or other the trustees or trustee for the time being of the trust," takes effect subject to the restrictions imposed in regard to receipts by a sole trustee not being a trust corporation (*k*).

T. Act, s. 23. "Power to employ agents." Subss. (1) and (2). General powers. Subs. (3). Special powers. [T. Act, 1893, s. 17 (1) (2) (3).] Subs. (1). General power to employ agents. Power to employ agents.

Sect. 23 of the Act, by sub-sects. (1) and (2), gives to trustees and personal representatives a general power of appointing agents, and, by sub-sect. (3), "without prejudice to such general power of appointing agents as aforesaid," re-enacts the special powers given by sub-sects. (1) and (2) of the repealed section, with a proviso to the effect of sub-sect. (3) of the same section.

Sub-sect. (1) gives statutory effect to what has long been a common form clause in almost universal use in settlements and wills (*l*), and is as follows:—

23.—(1) Trustees or personal representatives may, instead of acting personally, employ and pay an agent, whether a solicitor, banker, stockbroker, or other person, to transact any business or do any act required to be transacted or done in the execution of the trust, or the administration of the testator's or intestate's estate, including the receipt and payment of money, and shall be entitled to be allowed and paid all charges and expenses so incurred, and shall not be responsible for the default of any such agent if employed in good faith.

(*k*) T. Act, s. 18 (3).

(*l*) The words "if employed in good faith" have not usually been *expressed* in the common form, though, no doubt, necessarily *implied*.

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Subs. (2). Power to employ agents to act abroad.

Sub-sect. (2) gives trustees and personal representatives power to appoint agents for the purpose of administering property in any place outside the "United Kingdom" (*m*), and goes much further than sub-sect. (1), because the purposes for which such agents may be appointed include that of executing or exercising any discretion or trust or power vested in the appointors in relation to such property. Sub-sect. (1) only applies to ministerial acts, not involving the exercise of a discretion vested in the trustees or personal representatives.

Sub-sect. (2) is as follows:—

(2) Trustees or personal representatives may appoint any person to act as their agent or attorney for the purpose of selling, converting, collecting, getting in, and executing and perfecting insurances of, or managing or cultivating, or otherwise administering any property, real or personal, moveable or immoveable, subject to the trust or forming part of the testator's or intestate's estate, in any place outside the United Kingdom or executing or exercising any discretion or trust or power vested in them in relation to any such property, with such ancillary powers, and with and subject to such provisions and restrictions as they may think fit, including a power to appoint substitutes, and shall not, by reason only of their having made such appointment, be responsible for any loss arising thereby.

(b) *New enactments.*

T. Act, s. 16. "Power to raise money by sale, mortgage, &c."

Sect. 16 (*n*) of the Act, by sub-sect. (1), empowers trustees to raise by sale, conversion, calling in, or mortgage of all or any part of the trust property for the time being in possession money for any purpose for which they are authorised to pay or apply capital money subject to the trust.

T. Act, s. 17. "Protection to purchasers and mortgagees dealing with trustees."

Sect. 17 of the Act gives effect to what has, to a considerable extent, been a common form by providing that no purchaser or mortgagee, paying or advancing money on a sale or mortgage purporting to be made under any trust or power vested in trustees, shall be concerned to see that such money is wanted,

(*m*) *I.e.*, Great Britain and Northern Ireland. See Table of Definitions, above, Part I., Chapter VII.

(*n*) This section applies notwithstanding anything to the contrary contained in the instrument, if any, creating the trust, but does not apply to trustees of property held for charitable purposes, or to trustees of a settlement for the purposes of the S. L. Act, not being also the statutory owners: see sub-sect. (2).

or that no more than is wanted is raised, or otherwise as to the application thereof.

T. Act, s. 20. "Application of insurance money where policy kept up under any trust, power or obligation."

Sect. 20 of the Act contains somewhat elaborate provisions applicable to money (1) receivable by trustees or any beneficiary, (2) under a policy of insurance against the loss or damage of any property subject to a trust or to a settlement within the meaning of the Settled Land Act, (3) whether by fire or otherwise, (4) where the policy has been kept up (i) under any trust in that behalf, or (ii) under any power, statutory (*o*) or otherwise, or (iii) in performance of any covenant or of any obligation, statutory or otherwise, or (iv) by a tenant for life impeachable for waste.

Application of section.

Subs. (1). Capital money.

By sub-sect. (1), any such money is to be capital money for the purposes of the trust or settlement.

Subs. (2). Collection of money.

Sub-sect. (2) provides for the collection and handing over or payment into Court of such money where receivable by any person other than the trustees of the trust or settlement.

Subs. (3). Application of money.

Sub-sect. (3) provides for the application of such money in the four several cases where it was receivable:—

(a) In respect of settled land within the meaning of the Settled Land Act, or any building or works thereon;

(b) In respect of personal chattels settled as heirlooms within the meaning of the same Act;

(c) In respect of property held upon trust for sale; and

(d) In any other case.

Subs. (4). Alternative mode of application.

By sub-sect. (4) such money, or any part thereof, may *also*, subject as therein mentioned, be applied by the trustees, or, if in Court, under the direction of the Court, in rebuilding, reinstating, replacing, or repairing the property lost or damaged.

Subs. (5) Saving.

Sub-sect. (5) saves the right of any person to require any such money, or any part thereof, to be applied in rebuilding, reinstating, or repairing the property lost or damaged, or the rights of any mortgagee, lessor, or lessee, whether under any statute or otherwise.

(*o*) See, *e.g.*, T. Act, s. 19, re-enacting T. Act, 1893, s. 18 (1) (2).

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This sub-section saves the statutory right of "any person interested" to require the insurance money to be laid out in rebuilding or reinstating the property which has been destroyed or damaged by fire (*p*).

Subs. (6). Application.

By sub-sect. (6) the section applies to policies effected either before or after the commencement of the Act, but only to money received after such commencement.

T. Act, s. 21. "Deposit of documents for safe custody."

By sect. 21 trustees may deposit trust documents with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, and any sum payable in respect of such deposit shall be paid out of the income of the trust property.

T. Act, s. 22. "Reversionary interests, valuations, and audit."

Subss. (1) and (2). Reversionary interests.

Sub-sects. (1) and (2) of sect. 22 deal with the case "where trust property includes any share or interest in property not vested in the trustees, or the proceeds of the sale of any such property, or any other thing in action." Sub-sect. (1) gives various powers to the trustees, on the same falling into possession, or becoming payable or transferable, including power to agree to the amount or value thereof, to accept authorised investments in satisfaction thereof, and to give a discharge for the same; and sub-sect. (2) gives certain immunities to the trustees, while such share or interest or other thing in action is in reversion or outstanding (*q*).

Subs. (3). Valuations.

By sub-sect. (3) trustees may, for the purposes therein mentioned, from time to time (by duly qualified agents) ascertain and fix the value of any trust property, and any valuation so made in good faith shall be binding upon all persons interested under the trust.

Subs. (4). Audit.

By sub-sect. (4) trustees may from time to time, within the limits therein specified, cause the accounts of the trust property to be examined or audited by an independent accountant at the cost of the trust property, costs attributable to capital being borne by capital, and those attributable to income being

(*p*) See Treatise, Vol. I., pp. 485 to 488.

(*q*) Powers and provisions similar to those in sub-sects. (1) and (2) have, not uncommonly, been inserted in settlements of reversionary interests.

borne by income, unless in any special case the trustees otherwise direct.

T. Act, s. 24. "Power to concur with others."

Sect. 24 provides for the case "where an undivided share in the proceeds of sale of land directed to be sold, or in any other property, is subject to a trust, or forms part of the estate of a testator or intestate," and empowers the trustees or personal representatives "(without prejudice to the trust for sale affecting the entirety of the land and the powers of the trustees for sale in reference thereto)" (*r*) to execute or exercise any trust or power vested in them in relation to such share in conjunction with the persons entitled to or having power in that behalf over the other share or shares.

"Derivative trust."

This section appears to contemplate the case of such a "derivative trust" as is mentioned in sub-sect. (3) of sect. 28 of the Property Act (*s*).

T. Act, s. 25. "Power to delegate trusts during absence abroad."

Sect. 25 of the Act is of special importance as involving a departure from the maxim *delegatus non potest delegare* (*t*).

Subs. (1). "Trustee" going abroad for one month may appoint attorney to execute trusts, &c.

The section provides, by sub-sect. (1), that a "trustee" (which expression in this section includes a tenant for life or statutory owner (*u*)) intending to remain out of the "United Kingdom" (*v*) *for a period exceeding one month* may, notwithstanding any rule of law or equity to the contrary, by power of attorney delegate to any person (including a "trust corporation" (*v*)) the execution or exercise during his absence from the United Kingdom of all or any trusts, powers, and discretions vested in him as such trustee, either alone or jointly with any other person or persons, provided that a person, being the only other co-trustee and not being a trust corporation, shall not be appointed to be an attorney under this sub-section.

Who may be appointed.

Personal representative.

It is not clear whether a personal representative is a "trustee" for the purposes of this section. On the whole,

(*r*) See the provisions of the L. P. Act as to "Dispositions on trust for sale," above, Part III., Chapter VII.

(*s*) Above, pp. 171, 173.

(*t*) The nearest precedent appears to be afforded by the statutory powers to delegate conferred on trustees and tenants for life during the war: see Treatise, Vol. I., p. 694, n. (*k*).

(*u*) T. Act, s. 25 (11).

(*v*) See Table of Definitions, above, Part I., Chapter VII.

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however, it is thought that there is no "context" in this section to prevent "trustee" from including a personal representative (*w*).

Subs. (2). Liability of donor.

The donor of a power of attorney given under this section shall be liable for the acts or defaults of the donee in the same manner as if they were the acts or defaults of the donor (*x*).

Subs. (3). Duration of power.

The power of attorney shall not come into operation unless and until the donor is out of the United Kingdom, and shall be revoked by his return (*y*).

Subss. (4) to (6). Formalities.

The power of attorney must be attested by at least one witness, and be filed at the Central Office within ten days after the execution thereof, with a statutory declaration by the donor that he intends to remain out of the United Kingdom for a period exceeding one month from the date of the declaration or from a date therein mentioned (*z*). The execution of "any such instrument" (*a*) and statutory declaration must be verified in such manner as is required by statute (*b*) in the case of powers of attorney filed at the Central Office (*c*). If the power of attorney confers a power to dispose of or deal with land or a charge registered under the Land Registration Act, 1925, an office copy must be filed at the Land Registry (*d*).

Subs. (9). Powers of donee.

For the purpose of executing or exercising the trusts or powers delegated to him, the donee may exercise any of the powers conferred on the donor as trustee by statute, or by the instrument creating the trust, including power, for the purpose of the transfer of any inscribed stock, himself to delegate to an attorney power to transfer, but not including the power of delegation conferred by this section (*e*).

Subss. (7), (8), (10). Dealings with donee.

Sub-sects. (7), (8) and (10) contain provisions for the protection of persons dealing with the donee of the power.

(*w*) See the definition of "trustee" referred to above, p. 361.
(*x*) T. Act, s. 25 (2).
(*y*) Sub-sect. (3).
(*z*) T. Act, s. 25 (4).
(*a*) That is, apparently, the power of attorney.
(*b*) That is, by sect. 219 of the Supreme Court of Judicature (Consolidation) Act, 1925, above, p. 18.
(*c*) Sub-sect. (5).
(*d*) Sub-sect. (6).
(*e*) T. Act, s. 25 (9).

Section ii.—*Indemnities* (*f*).

(a) *Amendments.*

T. Act, s. 26. "Protection against liability in respect of rents and covenants." [L. P. Am. Act, 1859, ss. 27, 28.]

Sect. 26 of the Act gives to "a personal representative or trustee liable as such for—

(a) any rent, covenant or agreement reserved by or contained in any lease; or

(b) any rent, covenant or agreement payable under or contained in any grant made in consideration of a rent-charge; or

(c) any indemnity given in respect of any rent, covenant or agreement referred to in either of the foregoing paragraphs";

protection similar to that afforded by the repealed sections to executors and administrators against liabilities (a) and (b).

Conveyance.

Under the new section the conveyance of the property demised or granted may be made not only, as in the repealed sections, to a purchaser, but also to a legatee, devisee, or other person entitled to a conveyance.

T. Act, s. 27. "Protection by means of advertisements." [L. P. Am. Act, 1859, s. 29.]

Extension to trustees.

The well-known section of the Law of Property Amendment Act, 1859, under which for upwards of sixty years prior to the 1st January, 1926, personal representatives sought protection by "advertising for creditors," is replaced by sect. 27 (*g*) of the new Act, which, "with a view to the conveyance to or distribution among the persons entitled to any real or personal property," extends to "the trustees of a settlement or of a disposition on trust for sale" the protection given by the repealed section only to personal representatives.

Other amendments.

The new section differs from the old also in specifying what advertisements should be issued and the length of notice to be given, and also in the saving clause, as expressed in the concluding words of sub-sect. (2), which are as follows:—

[but nothing in this section—

(a) prejudices the right of any person to follow the property,] or any property representing the same, [into the hands of any

(*f*) T. Act, ss. 26 to 30.

(*g*) This section applies notwithstanding anything to the contrary in the will or other instrument, if any, creating the trust: see sub-sect. (3).

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person,] other than a purchaser, [who may have received it;] or

(b) frees the trustees or personal representatives from any obligation to make searches or obtain official certificates of search similar to those which an intending purchaser would be advised to make or obtain.

(b) *New Enactment.*

T. Act, s. 28. "Protection in regard to notice."

Sect. 28 of the Act provides that a trustee or personal representative acting for the purposes of more than one trust or estate shall not, in the absence of fraud, be affected by notice of any instrument, matter, fact or thing in relation to any particular trust or estate if he has obtained notice thereof merely by reason of his acting or having acted for the purposes of another trust or estate.

Section iii.—*Maintenance, Advancement and Protective Trusts* (*h*).

T. Act, s. 31. "Power to apply income for maintenance and to accumulate surplus income during a minority."

Where the instrument, if any, under which "the interest" arises came into operation *after* the commencement of the Act (*i*), sect. 31 of the Act supersedes and replaces sect. 43 of the Conveyancing Act, 1881, which latter section is still in force as regards instruments coming into operation *before* such commencement (*j*).

Application of section.

Subject as above mentioned, the new section applies (*k*) (1) where *any* property is held by trustees in trust for *any* person for *any* interest whatsoever, whether vested or contingent; and (2) subject to any prior interests or charges affecting that property.

Subs. (1), para. (i). Maintenance during infancy. [C. A., 1881, s. 43 (1).]

Paragraphs (i) and (ii) of sub-sect. (1) are as follows:—

(i) [during the infancy of any such person,] if his interest so long continues, [the trustees may, at their sole discretion, pay to his parent or guardian, if any, or otherwise apply for or towards his maintenance, education, or benefit, the whole or]

(*h*) T. Act, ss. 31 to 33.
(*i*) T. Act, s. 31 (5).
(*j*) Above, p. 17. This sect. 43 also has to do duty for sub-sects. (4) and (5) of sect. 42 of the C. Act, 1881, in regard to instruments coming into operation before the commencement of the T. Act.
(*k*) T. Act, s. 31 (1).

such [part,] if any, [of the income of that property] as may, in all the circumstances, be reasonable, [whether or not there is—

(a) any other fund applicable to the same purpose; or

(b) any person bound by law to provide for his maintenance or education;] and

Para. (ii). Income on attaining age.

(ii) if such person on attaining the age of twenty-one years has not a vested interest in such income, the trustees shall thenceforth pay the income of that property and of any accretion thereto under subsection (2) of this section to him, until he either attains a vested interest therein or dies, or until failure of his interest.

Proviso. Circumstances to be regarded. More than one fund.

The proviso to sub-sect. (1) specifies the circumstances to which the trustees shall have regard in deciding whether the whole or any part of the income of the property is during a minority to be paid or applied for the purposes aforesaid; and provides that, where trustees have notice that the income of more than one fund is applicable for those purposes, then, so far as practicable, unless the entire income of the funds is paid or applied as aforesaid or the Court otherwise directs, a proportionate part only of the income of each fund shall be so paid or applied.

Old rule.

In cases to which sect. 43 of the Conveyancing Act, 1881, applies, the rule is that, where there is more than one fund, maintenance should be given from that fund which it is most for the infant's benefit to have recourse to (*l*).

Subs. (2). [C. Act, 1881, s. 43 (2).] Accumulation of surplus income.

Sub-sect. (2) is as follows:—

(2) [During the infancy of any such person,] if his interest so long continues, [the trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time in authorised investments(*m*), and shall hold those accumulations] as follows:—

Destination of accumulations.

(1) If any such person—

(a) attains the age of twenty-one years, or marries under that age, and his interest in such income during his infancy or until his marriage is a vested interest; or

(b) on attaining the age of twenty-one years or on marriage under that age becomes entitled to the property from which

(*l*) See Simpson on Infants, 4th ed., p. 264.

(*m*) For the definition of "authorised investments," see above, Part I., Chapter VII.

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such income arose in fee simple, absolute or determinable, or absolutely, or for an entailed interest;

the trustees shall hold the accumulations in trust for such person absolutely, but without prejudice to any provision with respect thereto contained in any settlement by him made under any statutory powers during his infancy (*n*), and so that the receipt of such person after marriage, and though still an infant, shall be a good discharge; and

(ii) In any other case the trustees shall, notwithstanding that such person had a vested interest in such income, hold the accumulations as an accretion to the capital of the property from which such accumulations arose, and as one fund with such capital for all purposes, and so that, if such property is settled land, such accumulations shall be held upon the same trusts as if the same were capital money arising therefrom;

[but the trustees may, at any time] during the infancy of such person if his interest so long continues, [apply those accumulations, or any part thereof, as if they were income arising in the then current year.]

Subs. (3). Contingent interest. Subs. (4). Vested annuity.

Sub-sects. (3) and (4) of sect. 31 contain provisions adapting this section to the respective cases of a contingent interest and a vested annuity.

T. Act, s. 32, subs. (1). "Power of advancement."

Sub-sect. (1) of sect. 32 of the Act confers on trustees a statutory power of advancement, which follows closely the lines of the like power given by the advancement clause commonly inserted in wills and settlements, and will, in cases to which the section applies, render unnecessary the insertion of such a clause in future dispositions of property on trust, except in so far as it may be desired to modify the statutory power (*o*).

Subss. (2) and (3). Application of section.

The section applies only where the trust property consists of money or securities (*p*) or of property held upon trust for sale, calling in and conversion, and such money or securities, or the proceeds of such sale, calling in and conversion are not by statute or in equity considered as land, or applicable as capital money for the purposes of the Settled Land Act (*q*); and the

(*n*) See Infants Settlement Act, 1855, and S. L. Act, s. 27 (3).

(*o*) It is thought that it will be open to settlors to modify or wholly exclude the application of the section, though no express power to do so is given.

(*p*) For the definition of "securities," see above, Part I., Chapter VII.

(*q*) See above, Part IV., Chapter VI.

section does not apply to trusts constituted or created before the commencement of the Act.

T. Act, s. 33. "Protective trusts."

Sect. 33 of the Act affords another illustration of statutory provisions intended to take the place of, and to render unnecessary in future, express provisions to the like effect, such as have not uncommonly been inserted in wills and settlements, and, in the present instance, by means of what is sometimes known as a "spendthrift clause."

Protective trusts defined.

Sub-sect. (1) provides that where any income, including an annuity or other periodical income payment, is directed to be held on protective trusts for the benefit of any person (in this section called "the principal beneficiary") for the period of his life or for any less period, then during that period (in this section called "the trust period") the said income shall, without prejudice to any prior interest, be held on the trusts specified in the sub-section, that is, shortly and in effect, (i) Upon trust for the principal beneficiary during the trust period or until, whether before or after the termination of any prior interest, some act is done or event happens, other than an advance under any statutory or express power, whereby, if the said income were payable during the trust period to the principal beneficiary absolutely during the trust period, he would be deprived of the right to receive the same or any part thereof; and (ii) upon the failure or determination of the said trust during the subsistence of the trust period, then, during the residue of that period, upon a discretionary trust for the benefit of all or any one or more exclusively of the other or others of a specified class of persons, including the principal beneficiary.

Section, how incorporated.

Where it is desired to incorporate the section in any instrument, what must be done, and all that need be done, is by the instrument to direct or declare that the income, annuity or other periodical payment "shall be held on protective trusts for the benefit of A. B." (that is, the person, naming him or her, who is intended to play the *rôle* of "the principal beneficiary") "during his or her life" or some less period.

Subs. (2). Application of section.

The section does not apply to trusts coming into operation before the commencement of the Act, and has effect subject

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to any variation of the implied trusts aforesaid contained in the instrument creating the trust.

Subs. (3). Validity of trust.

Nothing in the section operates to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside (*r*).

(*r*) *E.g.*, a trust to pay the income to the settlor of the property during his life or until he shall become bankrupt: see *Higinbotham* v. *Holme*, 19 Ves. 88.

CHAPTER V.

APPOINTMENT AND DISCHARGE OF TRUSTEES (*a*).

(a) *Amendments.*

T. Act, s. 36. "Power of appointing new or additional trustees."

Subs. (1). In what cases a new trustee may be appointed. [T. Act, 1893, s. 10 (1).]

Who may be appointed.

Sub-sect. (1) of sect. 36 of the Act, replacing sub-sect. (1) of sect. 10 of the Act of 1893, extends the cases in which a new trustee or new trustees may be appointed to the case where a trustee is an infant (*b*); but the power of appointing new trustees conferred by the new sub-section is subject to the restrictions imposed by the Act on the number of trustees (*c*).

The sub-section further alters the law by providing that the persons exercising the power may appoint to fill the vacancy one or more other persons "(whether or not being the persons exercising the power)," or, in other words, may appoint themselves (*d*).

Subss. (7) and (8). [T. Act, 1893, s. 10 (3) and (4).]

Sub-sects. (7) and (8) of sect. 36 re-enact respectively, without modification, sub-sects. (3) and (4) of sect. 10 of the Act of 1893.

New sub-sections.

Sub-sects. (2), (3), (4), (5), (6) and (9) of sect. 36 of the Act are new.

Subs. (2). New trustee or new trustees in place of trustee removed.

Sub-sect. (2) gives power to appoint a new trustee or new trustees in the place of a trustee (whether an individual or a corporation) who has been removed under a power contained in the trust.

(*a*) T. Act, Part III., ss. 34 to 40.

(*b*) Under the repealed sub-section this could not be done: see *Re Tallatire* (1885), W. N. 191. As to infant trustees, see further, above, Part III., Chapter VIII., pp. 177, 178, 180.

(*c*) Namely, by sect. 34, below, p. 380.

(*d*) Under the repealed sub-section this could not be done: see *In re Skeats*, 42 C. D. 522; *In re Newen*, (1894) 2 Ch. 297; *In re Sampson*, (1906) 1 Ch. 435.

Subs. (3). Corporation dissolved.

By sub-sect. (3), where a corporation being a trustee is or has been dissolved, either before or after the commencement of the Act, then, for the purposes of this section and of any enactment replaced thereby, the corporation shall be deemed to be and to have been from the date of the dissolution incapable of acting in the trusts or powers reposed in or conferred on the corporation.

Subss. (4) and (5). Representatives of last surviving or continuing trustee.

Sub-sects. (4) and (5) prescribe by whom the power of appointment given by sub-sect. (1) of this section, or by any similar previous enactment, to the personal representatives of a last surviving or continuing trustee shall be, and be deemed always to have been, exercisable.

Subs. (6). Power to appoint additional trustees.

Sub-sect. (6) contains an important new power to appoint an additional trustee or additional trustees (*e*) in the cases therein mentioned, and is as follows:—

(6) Where a sole trustee, other than a trust corporation, is or has been originally appointed to act in a trust, or where, in the case of any trust, there are not more than three trustees (none of them being a trust corporation) either original or substituted and whether appointed by the Court or otherwise, then and in any such case—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the trust; or

(b) if there is no such person, or no such person able and willing to act, then the trustee or trustees for the time being;

may, by writing, appoint another person or other persons to be an additional trustee or additional trustees, but it shall not be obligatory to appoint any additional trustee, unless the instrument, if any, creating the trust, or any statutory enactment provides to the contrary, nor shall the number of trustees be increased beyond four by virtue of any such appointment.

Subs. (9). Lunatic trustee, who is also a beneficiary.

By sub-sect. (9), where a "lunatic" (*f*) or "defective" (*f*), being a trustee, is also entitled in possession to some beneficial interest in the trust property, no appointment of a new trustee in his place shall be made by the continuing trustees or trustee under this section, unless leave has been given by the Judge or Master in Lunacy to make the appointment.

(*e*) In the T. Act "new trustee" includes an additional trustee: see Table of Definitions, above, Part I., Chapter VII.

(*f*) See the Table of Definitions, above, Part I., Chapter VII.

Apparently this restriction does not apply where there is a person nominated for the purpose of appointing new trustees by the instrument creating the trust, and such person proposes to appoint a new trustee in the place of a lunatic trustee; for a lunatic is "incapable of acting" within the meaning of sub-sect. (1) of this section (*g*).

T. Act, s. 37. "Supplemental provisions as to appointment of new trustees."

Sub-sect. (1) of sect. 37 re-enacts sub-sect. (2) of sect. 10 of the Act of 1893 and paragraphs (a), (b), (c) and (d) of the latter sub-section with the following amendments:—

Subs. (1). [T. Act, 1893, s. 10 (2).]

The power to increase the number of trustees given by paragraph (a) is subject to the restrictions imposed by the Act on the number of trustees (*h*).

Para (a). Power to increase number of trustees.

Where under paragraph (b) a separate set of trustees is appointed, the number must not exceed four, and the power to appoint one separate trustee, if only one trustee was originally appointed, is "save as hereinafter provided," that is, by sub-sect. (2) of sect. 37.

Para. (b). Separate set of trustees.

Paragraphs (c) and (d) of sub-sect. (1) and sub-sect. (2) are as follows:—

Para. (c). Limitation of need to appoint. [T. Act, 1893, s. 10 (2) (c).]

(c) [it shall not be obligatory,] save as hereinafter provided, [to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed, but, except where only one trustee was originally appointed,] and a sole trustee when appointed will be able to give valid receipts for all capital money, [a trustee shall not be discharged from his trust unless there will be] either a trust corporation or [at least two individuals to act as trustees to perform the trust; and

Para. (d). Vesting the trust property. [T. Act, 1893, s. 10 (2) (d).]

(d) any assurance or thing requisite for vesting the trust property, or any part thereof,] in a sole trustee, or [jointly in the persons who are the trustees, shall be executed or done.]

Subs. (2). Restriction on appointment of sole trustee.

(2) Nothing in this Act shall authorise the appointment of a sole trustee, not being a trust corporation, where the trustee, when appointed, would not be able to give valid receipts for all capital money arising under the trust.

(*g*) See *In re Blake* (1887), W. N. 173; *Re Cutler*, 39 Sol. J. 484; *In re Lemann*, 22 C. D. 633.

(*h*) That is, by sect. 34, below, p. 380.

Part V. Chap. V.

T. Act, s. 39. "Retirement of trustee without a new appointment." [T. Act, 1893, s. 11.]

Sect. 39 of the Act re-enacts sub-sects. (1) and (2) of sect. 11 of the Act of 1893, with this difference, that the new section applies where a trustee is desirous of being discharged from the trust, and after his discharge there will be either a trust corporation or at least two individuals to act as trustees to perform the trust; whereas the old section applied where there were more than two trustees and one of them desired to be discharged.

T. Act, s. 40. Vesting declarations.

Sect. 40 of the Act re-enacts the provisions as to vesting declarations contained in sect. 12 of the Act of 1893, but with considerable amendments, of which the most important is that where a deed might have contained, but does not contain, an express vesting declaration, a vesting declaration is to be implied, unless a contrary intention appears.

As the section contains these amendments, and is of importance as affecting the title to land, it is thought desirable to set it out at length. The section is as follows:—

Vesting of trust property in new or continuing trustees. [T. Act, 1893, s. 12 (1).]

40.—[(1) Where by a deed a new trustee is appointed to perform any trust, then—

(a) if the deed contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover or receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become or are the trustees for performing the trust, the deed shall operate, without any conveyance or assignment, to vest in those persons as joint tenants and for the purposes of the trust the estate interest or right to which the declaration relates;] and

(b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by the appointor extending to all the estates interests and rights with respect to which a declaration could have been made.

[Ib. (2).] [(2) Where by a deed a retiring trustee is discharged under the statutory power without a new trustee being appointed, then—

(a) if the deed contains such a declaration as aforesaid by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, the deed shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates;] and

(b) if the deed is made after the commencement of this Act and does not contain such a declaration, the deed shall, subject to any express provision to the contrary therein contained, operate as if it had contained such a declaration by such persons as aforesaid extending to all the estates, interests and rights with respect to which a declaration could have been made.

(3) An express vesting declaration, whether made before or after the commencement of this Act, shall, notwithstanding that the estate, interest or right to be vested is not expressly referred to, and provided that the other statutory requirements were or are complied with, operate and be deemed always to have operated (but without prejudice to any express provision to the contrary contained in the deed of appointment or discharge) to vest in the persons respectively referred to in subsections (1) and (2) of this section, as the case may require, such estates, interests and rights as are capable of being and ought to be vested in those persons.

(4) [This section does not extend— [T. Act, 1893, s. 12 (3).]

(a) to land conveyed by way of mortgage for securing money subject to the trust,] except land conveyed on trust for securing debentures or debenture stock;

(b) to land held under a lease which contains any covenant, condition or agreement against assignment or disposing of the land without licence or consent, unless, prior to the execution of the deed containing expressly or impliedly the vesting declaration, the requisite licence or consent has been obtained, or unless, by virtue of any statute or rule of law, the vesting declaration, express or implied, would not operate as a breach of covenant or give rise to a forfeiture;

(c) [to any share, stock, annuity or property which is only transferable in books kept by a company or other body, or in manner directed by or under an Act of Parliament.]

In this subsection "lease" includes an underlease and an agreement for a lease or underlease.

(5) [For purposes of registration of the deed in any registry, the person or persons making the declaration] expressly or impliedly, [shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.] [Ib. (4).]

(6) [This section applies to deeds of appointment or discharge executed on or after the first day of January, eighteen hundred and eighty-two.] [Ib. (5).]

Sub-sect. (3) should prove useful as avoiding any question as to the effect or sufficiency of an express vesting declaration where the other statutory requirements were or are complied with.

Subs. (3). Effect of express vesting declarations.

Part V. Chap. V.

Implied declaration to be preferred.

It is thought that in practice it will, as a general rule, be preferable to rely on the implied declaration, the effect of which is statutory, rather than insert an express declaration, the effect of which will, or may, depend upon the language used.

Subs. (4). Property affected.

The amendments introduced by paragraphs (a) and (b) of sub-sect. (4) should be noted.

(b) *New Enactments.*

T. Act, ss. 34, 35 and 38.

The following sections in Part III. of the Act are new, and as they are important and do not readily lend themselves to condensation, they are set out at length.

Limitation of the number of trustees.

34.—(1) Where, at the commencement of this Act, there are more than four trustees of a settlement of land, or more than four trustees holding land on trust for sale, no new trustees shall (except where as a result of the appointment the number is reduced to four or less) be capable of being appointed until the number is reduced to less than four, and thereafter the number shall not be increased beyond four.

(2) In the case of settlements and dispositions on trust for sale of land made or coming into operation after the commencement of this Act—

(a) the number of trustees thereof shall not in any case exceed four, and where more than four persons are named as such trustees, the four first named (who are able and willing to act) shall alone be the trustees, and the other persons named shall not be trustees unless appointed on the occurrence of a vacancy;

(b) the number of the trustees shall not be increased beyond four.

(3) This section only applies to settlements and dispositions of land, and the restrictions imposed on the number of trustees do not apply—

(a) in the case of land vested in trustees for charitable, ecclesiastical, or public purposes; or

(b) where the net proceeds of the sale of the land are held for like purposes; or

(c) to the trustees of a term of years absolute limited by a settlement on trusts for raising money, or of a like term created under the statutory remedies relating to annual sums charged on land.

Appointments of trustees of settlements and dispositions on trust for sale of land.

35.—(1) Appointments of new trustees of conveyances on trust for sale on the one hand and of the settlement of the proceeds of sale on the other hand, shall, subject to any order of the Court, be effected by separate instruments, but in such manner as to secure that the same persons shall become the trustees of the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale.

(2) Where new trustees of a settlement are appointed, a memorandum of the names and addresses of the persons who are for the time being the trustees thereof for the purposes of the Settled Land Act, 1925, shall be endorsed on or annexed to the last or only principal vesting instrument by or on behalf of the trustees of the settlement, and such vesting instrument shall, for that purpose, be produced by the person having the possession thereof to the trustees of the settlement when so required.

(3) Where new trustees of a conveyance on trust for sale relating to a legal estate are appointed, a memorandum of the persons who are for the time being the trustees for sale shall be endorsed on or annexed thereto by or on behalf of the trustees of the settlement of the proceeds of sale, and the conveyance shall, for that purpose, be produced by the person having the possession thereof to the last-mentioned trustees when so required.

(4) This section applies only to settlements and dispositions of land.

Subs. (2). S. L. Act trustees.

Sub-sect. (2) of this section is the enactment referred to in sub-sect. (1) of sect. 35 of the Settled Land Act (*i*).

Evidence as to a vacancy in a trust.

38.—(1) A statement, contained in any instrument coming into operation after the commencement of this Act by which a new trustee is appointed for any purpose connected with land, to the effect that a trustee has remained out of the United Kingdom for more than twelve months or refuses or is unfit to act, or is incapable of acting, or that he is not entitled to a beneficial interest in the trust property in possession, shall, in favour of a purchaser of a legal estate, be conclusive evidence of the matter stated.

(2) In favour of such purchaser any appointment of a new trustee depending on that statement, and any vesting declaration, express or implied, consequent on the appointment, shall be valid.

(*i*) Above, Part IV., Chap. IV., p. 304.

CHAPTER VI.

POWERS OF THE COURT (*a*).

Section 1.—*Appointment of New Trustees* (*b*).

(a) *Amendments.*

T. Act, s. 41, subs. (1).

SUB-SECT. (1) of sect. 41 (*c*) of the Trustee Act, replacing sub-sect. (1) of sect. 25 of the Act of 1893, is as follows:—

Power of Court to appoint new trustees.

[T. Act, 1893, s. 25 (1).]

41.—[(1) The Court may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient difficult or impracticable so to do without the assistance of the Court, make an order appointing a new trustee or new trustees either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee.

In particular and without prejudice to the generality of the foregoing provision, the Court may make an order appointing a new trustee in substitution for a trustee who is convicted of felony,] or is a lunatic or a defective, [or is a bankrupt,] or is a corporation which is in liquidation or has been dissolved.

Lunatic or defective.

The power given by this sub-section to appoint a new trustee in substitution for a trustee who is a "lunatic" (*d*) or a "defective" (*d*), coupled with the repeal (*e*) of sect. 1 of the Lunacy Act, 1911, and sub-sects. (3), (4) and (5) of sect. 2 of the Lunacy Act, 1922, and the qualified repeal (*f*) of sects. 135 to 138 of the Lunacy Act, 1890, marks the definite transfer to the High Court of the jurisdiction in lunacy in regard to lunatic trustees, except where the Judge or Master in Lunacy is given concurrent jurisdiction with the High Court (*g*).

(*a*) T. Act, Part IV., ss. 41 to 63. (*b*) T. Act, ss. 41 to 43.
(*c*) Sub-sects. (2), (3) and (4) of sect. 41 re-enact respectively sect. 18 of the Deeds of Arrangement Act, 1914, and sub-sects. (2) and (3) of sect. 25 of the T. Act, 1893.
(*d*) See Table of Definitions, above, Part I., Chapter VII.
(*e*) By T. Act, s. 70, and Second Schedule.
(*f*) By T. Act, s. 70, and Second Schedule.
(*g*) See T. Act, s. 54, below, p. 386.

Under the repealed sect. 25, though it gave no express power to appoint a new trustee in substitution for a dissolved corporation, the Court had or assumed jurisdiction to make such an appointment (*h*).

Corporation in liquidation or dissolved.

(b) *New Enactment.*

Sect. 42 of the Act is as follows:—

42. Where the Court appoints a corporation, other than the Public Trustee, to be a trustee either solely or jointly with another person, the Court may authorise the corporation to charge such remuneration for its services as trustee as the Court may think fit.

Power to authorise remuneration.

Section ii.—*Vesting Orders* (*i*).

(a) *Amendments.*

Sect. 44 of the Act, replacing sect. 26 of the Act of 1893, re-enacts the several "cases" specified in the repealed section in which the Court may make an order vesting land, or releasing or disposing of the contingent right; but with certain modifications, of which only the more important (*k*) need be mentioned.

T. Act, s. 44. "Vesting orders of land." [T. Act, 1893, s. 26.]

Thus cases (i) and (ii) are thus stated in the new section:—

[(i) Where the Court appoints or has appointed a trustee,] or where a trustee has been appointed out of Court under any statutory or express power; [Ib. (i).]

[(ii) Where a trustee entitled to or possessed of any land] or interest therein, whether by way of mortgage or otherwise, [or entitled to a contingent right therein, either solely or jointly with any other person— [Ib. (ii).]

(a) is] under disability; [or

(b) is out of the jurisdiction of the High Court; or

(c) cannot be found,] or, being a corporation, has been dissolved.

The introduction of the words "or where a trustee has been appointed out of Court under any statutory or express power" Case (i). Trustee appointed out of Court.

(*h*) See *In re No.* 9, *Bomore Road*, (1906) 1 Ch. 359; *In re Ruddington Land*, (1909) 1 Ch. 701; *In re Albert Road, Norwood*, (1916) 1 Ch. 289; Treatise, Vol. II., p. 935.

(*i*) T. Act, ss. 44 to 56.

(*k*) Throughout the new sections relating to land, namely, sects. 44 to 50, "interest in land" usually takes the place of, or is added to, the word "land."

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effects a useful change in the law. Under the old section the Court had no jurisdiction to make a vesting order in favour of a trustee appointed out of Court (*l*).

Case (ii).

The words "whether by way of mortgage or otherwise" in case (ii) bring in a trustee mortgagee.

Case (ii) (a).

The substitution of "under disability" for "an infant" in case (ii) (a) extends the jurisdiction so as to include a lunatic or defective as well as an infant.

Case (ii) (b). Dissolved corporation.

The reference in case (ii) (b) to a corporation which has been dissolved confers expressly the jurisdiction assumed by the Court under the repealed section to make orders vesting land formerly vested upon trust in a corporation since dissolved (*m*).

Case (vii).

Sect. 44 introduces the following *new* case in which an order can be made:—

(vii) Where land or any interest therein is vested in a trustee whether by way of mortgage or otherwise, and it appears to the Court to be expedient;

What orders may be made.

The section provides that in any of the cases therein mentioned and hereinbefore referred to—

[T. Act, 1893, s. 26.]

[the Court may make an order (in this Act called a vesting order) vesting the land] or interest therein [in any such person in any such manner and for any such estate] or interest [as the Court may direct, or releasing or disposing of the contingent right to such person as the Court may direct:

Provided that—

(a) Where the order is consequential on the appointment of a trustee the land] or interest therein [shall be vested for such estate as the Court may direct in the persons who on the appointment are the trustees; and

(b) Where the order relates to a trustee entitled] or formerly entitled [jointly with another person, and such trustee is] under disability or [out of the jurisdiction of the High Court or cannot be found,] or being a corporation has been dissolved, [the land] interest [or right shall be vested in such other person] who remains entitled, [either alone or with any other person the Court may appoint.]

(*l*) See *In re Dewhirst*, 33 C. D. 416.

(*m*) See *In re General, &c. Corporation, Limited*, (1904) 1 Ch. 47; *In re Albert Road, Norwood*, (1916) 1 Ch. 289.

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Sub-sect. (1) of sect. 51 of the Act, replacing sub-sect. (1) of sect. 35 of the Act of 1893, empowers the Court to make an order vesting the right to transfer or call for a transfer of stock (*n*), or to receive the dividends or income thereof, or to sue for or recover the thing in action, re-enacting for this purpose case (i), case (ii) (paragraphs (a) to (e)), and case (iii) in the repealed sub-section, but with amendments which closely follow the amendments made, as mentioned above (*o*), in sect. 44. The amendments are in case (i) and in paragraphs (a), (b) and (c) of case (ii), and are as follows:—

T. Act, s. 51. "Vesting orders as to stock and things in action." [T. Act, 1893, s. 35.]

[(i) Where the Court appoints or has appointed (a trustee,] or where a trustee has been appointed out of Court under any statutory or express power; [T. Act, 1893, s. 35 (1) (i).]

[(ii) Where a trustee entitled,] whether by way of mortgage or otherwise, [alone or jointly with another person to stock or to a thing in action— [Ib. (ii) (a), (b), (c).]

(a) is] under disability; [or

(b) is out of the jurisdiction of the High Court; or

(c) cannot be found,] or, being a corporation, has been dissolved.

Cases (iv) and (v).

Sub-sect. (1) of sect. 51 introduces the following *new* cases in which an order can be made:—

(iv) Where stock is standing in the name of a deceased person whose personal representative is under disability;

(v) Where stock or a thing in action is vested in a trustee whether by way of mortgage or otherwise and it appears to the Court to be expedient.

Subs. (2). Appointment of person to transfer. [T. Act, 1893, s. 35 (2).]

Sub-sect. (2) of sect. 51 is as follows:—

[(2) In all cases where a vesting order can be made under this section, the Court may, if it is more convenient, appoint some proper person to make or join in making the transfer:]

Provided that the person appointed to make or join in making a transfer of stock shall be some proper officer of the bank, or the company or society whose stock is to be transferred.

When "proper officer" to be appointed.

The proviso is new and reproduces sect. 137 (*p*) of the Lunacy Act, 1890. That section had no application where an order

(*n*) For the definition of "stock," see above, Part I., Chapter VII.

(*o*) P. 383.

(*p*) Sects. 135 to 138 of the Lunacy Act, 1890, are repealed (T. Act, s. 70, and Second Schedule) "so far as they relate to lunatic trustees, except where the judge or Master in Lunacy is given concurrent jurisdiction with the High Court": see T. Act, s. 54, below, p. 386.

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was made in the form in *In re Gregson*, (1893) 3 Ch. 233; and in such a case the bank had no right to require that its officer should be appointed to make the transfer (*q*).

Subss. (3) to (6). [T. Act, 1893, s. 35 (3) to (6).]

Sub-sects. (3) to (6) of sect. 51 re-enact sub-sects. (3) to (6) of sect. 35 of the Act of 1893, except that the references to the Bank of Ireland in the repealed sub-sects. (3) and (4) are omitted in the corresponding new sub-sections.

T. Act, s. 55. "Orders made upon certain allegations to be conclusive evidence." [T. Act, 1893, s. 40.]

Sect. 55 of the Act re-enacts sect. 40 of the Act of 1893, except that in the new section the reference to the Lunacy Act, 1890, is to that Act "as amended by any subsequent enactment" (*r*), that "Northern Ireland" is substituted for "Ireland," and that it slightly modifies the enumeration of the matters as to which, if alleged in the order, the order is to be conclusive.

(b) *New Enactments.*

T. Act, s. 53.

Sect. 53 of the Act is as follows:—

Vesting orders in relation to infant's beneficial interests.

53. Where an infant is beneficially entitled to any property the Court may, with a view to the application of the capital or income thereof for the maintenance, education, or benefit of the infant, make an order—

(a) appointing a person to convey such property; or

(b) in the case of stock, or a thing in action, vesting in any person the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such thing in action, upon such terms as the Court may think fit.

T. Act, s. 54.

Sect. 54 of the Act is as follows:—

Jurisdiction of the High Court in regard to lunatics.

54. Where the High Court has power under this Part of this Act to make orders in relation to lunatics and defectives who are trustees, the Judge or Master in Lunacy shall, save as provided in this section, have no power to make such an order:

Provided that where—

(a) a lunatic or defective has become a trustee of mortgaged property merely by reason of the mortgage having been paid off;

(b) an order in lunacy is made authorising the exercise of a power to appoint a trustee;

(*q*) See *In re C. M. G.*, (1898) 2 Ch. 324.

(*r*) Namely, by the Lunacy Acts, 1891 and 1908, and the Lunacy Act, 1922, ss. 1, 2 (1), (2), (6), (7) and (8) and 3.

(c) an order in lunacy is made for giving effect to a contract made before the lunatic or defective was under disability;

(d) a lunatic or defective is beneficially entitled to some interest in the property but holds the property or some interest therein under an express, implied or constructive trust;

the High Court and the Judge or Master in Lunacy shall, in accordance with rules to be made by the Lord Chancellor, have concurrent jurisdiction.

Rules.

Rules have been made under this section (*s*).

Repeals.

Sects. 135 ("Power to vest lands and release contingent right of lunatic trustee or mortgagee"), 136 ("Power to vest right to transfer stock and sue for chose in action"), 137 ("Person to be appointed to transfer"), and 138 ("Charity trustees") of the Lunacy Act, 1890, are repealed "so far as they relate to lunatic trustees, except where the Judge or Master in Lunacy is given concurrent jurisdiction with the High 'Court'" (*t*). Sect. 1 of the Lunacy Act, 1911, by which the powers of the Judge in Lunacy under sects. 135 to 143 of the Lunacy Act, 1890, as amended by any subsequent enactment, to make such vesting and other orders as are in those sections mentioned were, except so far as they relate to lunatic mortgagees, not being also trustees, transferred to the High Court; and subsects. (3), (4) and (5) of sect. 2 of the Lunacy Act, 1922, are also repealed (*t*).

Section iii.—*Jurisdiction to make other Orders* (*u*).

T. Act, s. 57. Extraordinary jurisdiction.

In *In re New*, (1901) 2 Ch. 534, it was laid down in effect that where in the administration of a trust estate there arises an emergency or a state of circumstances which it may be reasonably supposed was not foreseen by the author of the trust, and which renders it desirable, if not essential, in the interests of the beneficiaries that certain acts should be done which the trustees have no power to do, and to which the consent of all the beneficiaries (some not being *sui juris*) cannot be obtained,

(*s*) Namely, the T. A. (Jurisdiction in Lunacy) Rules, 1925; S. R. & O. 1925, 1249, L. 43, dated December 10th, 1925.

(*t*) T. Act, s. 70, and Second Schedule.

(*u*) T. Act, ss. 57 to 62. Sect. 63 re-enacts sect. 42 of the T. Act, 1893.

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the Court will exercise its general administrative jurisdiction by sanctioning these acts being done (*v*).

But that case has been described as constituting the high-water mark of the exercise by the Court of its extraordinary jurisdiction in relation to trusts (*w*); and the jurisdiction would not be exercised *merely* because it might appear beneficial to the estate (*x*).

The following section of the Act gives the Court general power to sanction *any* transaction not authorised by the trust instrument or by law, the only condition of the exercise of the power being, apparently, that the transaction "is in the opinion of the Court expedient":—

Power of Court to authorise dealings with trust property.

57.—(1) Where in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release, or other disposition, or any purchase, investment, acquisition, expenditure, or other transaction, is in the opinion of the Court expedient, but the same cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the Court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose, on such terms, and subject to such provisions and conditions, if any, as the Court may think fit and may direct in what manner any money authorised to be expended, and the costs of any transaction, are to be paid or borne as between capital and income.

(2) The Court may, from time to time, rescind or vary any order made under this section, or may make any new or further order.

(3) An application to the Court under this section may be made by the trustees, or by any of them, or by any person beneficially interested under the trust.

(4) This section does not apply to trustees of a settlement for the purposes of the Settled Land Act, 1925.

Subs. (4). Settled land.

General power to sanction any transaction which in the opinion of the Court would be for the benefit of the settled land, or any part thereof, or the persons interested under the settlement, is conferred on the Court by sect. 64 of the Settled Land Act (*y*).

(*v*) See (1901) 2 Ch. at pp. 543, 544, 545.
(*w*) *Per* Lord Cozens-Hardy (then Cozens-Hardy, L. J.) in *In re Tollemache*, (1903) 1 Ch. at p. 956.
(*x*) *In re New*, (1901) 2 Ch. at p. 554; *In re Tollemache*, (1903) 1 Ch. 457, 955.
(*y*) Above, Part IV., Chapter V., p. 323.

CHAPTER VII.

GENERAL PROVISIONS (*a*).

THE only "general provision" which need be mentioned is sect. 64, sub-sect. (1) of which re-enacts, with some amendments, sub-sect. (1) of sect. 47 of the Act of 1893. T. Act, s. 64.

Sect. 64 is as follows:—

64.—[(1) All the powers and provisions contained in this Act with reference to the appointment of new trustees, and the discharge and retirement of trustees, apply to and include trustees for the purposes of the Settled Land] Act, 1925, and trustees for the purpose of the management of land during a minority, [whether such trustees are appointed by the Court or by the settlement, or under provisions contained in] any instrument. Application of Act to Settled Land Act trustees. [T. Act, 1893, s. 47 (1).]

(2) Where, either before or after the commencement of this Act, trustees of a settlement have been appointed by the Court for the purposes of the Settled Land Acts, 1882 to 1890, or of the Settled Land Act, 1925, then, after the commencement of this Act—

(a) the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the settlement, though no trustees for the purposes of the said Acts were thereby appointed; or

(b) if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being for the purposes of the said Acts or the personal representatives of the last surviving or continuing trustee for those purposes,

shall have the powers conferred by this Act to appoint new or additional trustees of the settlement for the purposes of the said Acts.

(3) Appointments of new trustees for the purposes of the said Acts made or expressed to be made before the commencement of this Act by the trustees or trustee or personal representatives referred to in paragraph (b) of the last preceding subsection or by the persons referred to in paragraph (a) of that subsection are, without prejudice to any order of the Court made before such commencement, hereby confirmed.

(*a*) T. Act, Part V., ss. 64 to 71. See, for sect. 68 ("Definitions"), above, Part I., Chapter VII.; for sect. 69 ("Application of Act"), above, Part I., Chapter III., p. 12; for sect. 70 ("Enactments repealed"), above, *ibid.*; and for sect. 71 ("Short title," &c.), above, *ibid.*, pp. 7, 8.

PART VI.

The Land Charges Act.

CHAPTER I.

PRELIMINARY.

Repeals and re-enactments.

THE Land Charges Act (in this Part sometimes referred to as "the Act" or "the new Act") repeals (*a*) the Land Charges Registration and Searches Act, 1888 (in this Part sometimes referred to as "the Act of 1888"), the Land Charges Act, 1900 (in this Part sometimes referred to as "the Act of 1900"), and other enactments *in pari materia*. Some of these repealed enactments are re-enacted, with or without modification.

Changes in the law.

The new Act effects important changes in the law, and, in particular, considerably extends the range of matters capable of registration.

L. C. Act, s. 1. Continuation of existing registers.

Sect. 1 of the Act enacts that the "registrar" (*b*) shall, subject as provided (*c*) in the Act in regard to the register of annuities, continue to keep at the "registry" (*b*) in the "prescribed" (*b*) manner the following registers, namely, a register of pending actions; a register of annuities; a register of writs and orders affecting "land" (*b*); a register of "deeds of arrangement" (*b*) affecting land; and a register of "land charges" (*b*).

"Prescribed."

"Prescribed" means prescribed by rules made pursuant to the Act (*d*).

(*a*) L. C. Act, s. 24, and Schedule.
(*b*) For the meaning of these expressions, see Table of Definitions, above, Part I., Chapter VII.
(*c*) Namely, in sect. 4, below, p. 396.
(*d*) L. C. Act, s. 20 (9).

L. C. Act, s. 19. "General Rules."

By sect. 19 of the Act the Lord Chancellor is empowered, with the concurrence of the Treasury as to fees, to make such general rules as may be required for carrying the Act into effect, and in particular as regards the several matters therein mentioned.

Land Charges Rules, 1925.

Under this power General Rules, known as the Land Charges Rules, 1925 (*e*), have been made by the Lord Chancellor. They came into operation on the 1st January, 1926 (*f*), and rescind the Land Charges Rules, 1889, and the Rules made under sect. 2 of the Conveyancing Act, 1882 (*g*). These Rules prescribe (amongst other things) what are to be the contents of the several registers and the procedure to be adopted and the forms to be used when making applications for various purposes.

(*e*) S. R. & O., 1925, No. 1096/L. 29, dated November 3rd, 1925. See also the Land Charges Fees Order, 1925, S. R. & O., 1925, No. 1097.
(*f*) Rule 18.
(*g*) Rule 17.

CHAPTER II.

PENDING ACTIONS (*a*).

Section 2.

Sub-sects. (1) and (2) of sect. 2 of the Act are as follows:—

Register of pending actions.

2.—(1) A pending action, that is to say, any action, information or proceeding pending in Court relating to land or any interest in or charge on land, and a petition in bankruptcy filed after the commencement of this Act, may be registered in the register of pending actions.

(2) Subject to general rules, every application to register a pending action shall contain particulars of—

(a) the name, address, and description of the estate owner or other person whose estate or interest is intended to be affected thereby; and

(b) the Court in which the action, information or proceeding was commenced or filed; and

(c) the title of the action, information or proceeding; and

(d) the day when the action, information or proceeding was commenced or filed.

Subs. (1). "May be registered."

The words "*may* be registered" in sub-sect. (1) (*b*) are important when read in conjunction with references in other enactments to "instruments and matters *required* or *authorised* to be registered under the Land Charges Act, 1925" (*c*), or to "any instrument or matter *capable of registration* under the provisions of the Land Charges Act, 1925, or any enactment which it replaces" (*d*).

Equivalent registration.

In this connection it should be borne in mind that in the Settled Land Act (*e*) and in the Property Act (*f*) references to registration under the Land Charges Act apply to any regis-

(*a*) This is the subject of Part I. of the Act, comprising sects. 2 and 3.

(*b*) And the same words in sects. 6 (1), 8 (1) and 10 (1), and the words "shall be registered" in sect. 15 (1).

(*c*) See L. P. Act, s. 198, above, Part III., Chapter X., p. 201.

(*d*) See L. P. Act, s. 199, *ibid.*, p. 199; see also S. L. Act, s. 72 (2) (iii) (b), above, p. 326.

(*e*) See sect. 117 (3).

(*f*) See sect. 205 (3).

tration made under any other statute which is by the Land Charges Act to have effect as if the registration had been made under that Act (*g*).

Registration of *lis pendens*.
Repealed enactments.

Registration of a *lis pendens* (*h*) was first made necessary by sect. 7 of the Judgments Act, 1859, which, read in conjunction with sect. 4 of the same Act, provided that in the absence of express notice a *lis pendens* should not bind a purchaser or mortgagee unless registered and re-registered every five years in the same manner as a judgment. These sections are repealed (*i*) and replaced by sub-sects. (1), (2) and (8) of sect. 2, and sub-sect. (1) (except the proviso) of sect. 3 of the new Act.

Subs. (1).
Petition in bankruptcy.

The inclusion of a petition in bankruptcy amongst the proceedings which may be registered as pending actions is a useful change in the law. It will be seen that the change applies only to a petition filed *after* the commencement of the Act (*k*).

Subs. (2).
"Subject to general rules."
Subs. (3).
Entry by Registrar.

It will be seen that sub-sect. (2) takes effect "subject to general rules." A general rule has been made prescribing the particulars to be entered in the register of pending actions (*l*), and sub-sect. (3) of sect. 2 enacts that the registrar shall forthwith enter the particulars in the register in the name of the "estate owner" (*m*) or other person whose estate or interest is intended to be affected.

Subs. (6) and (7).
Discharge of registration of *lis pendens*.

Sub-sects. (6) and (7) of sect. 2 provide as follows:—

(6) The Court, if it thinks fit, may, upon the determination of the proceedings, or during the pendency thereof if satisfied that the proceedings are not prosecuted in good faith, make an order vacating the registration of the pending action, and direct the party on whose

(*g*) See L. C. Act, ss. 10 (5), 10 (6), 15 (3), below.
(*h*) As to the doctrine of *lis pendens*, apart from statute, and as to what is and what is not *lis pendens*, see Elphinstone and Clark on Searches, pp. 91, 92.
(*i*) L. C. Act, s. 24, and Schedule. Sect. 4 was repealed by the L. C. Act, 1900, s. 5, and Schedule, except so far as it applied to *lis pendens*.
(*k*) Sub-sects. (4) and (5) of sect. 2 contain provisions in regard to the registration of a petition in bankruptcy. For the alternative protection afforded by registering a receiving order made after the commencement of the Act, see sect. 6 (1) (c), below, p. 398.
(*l*) L. C. Rules, 1925, r. 2.
(*m*) See Table of Definitions, above, Part I., Chapter VII.

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behalf the registration was made to pay all or any of the costs and expenses occasioned by the registration and vacating thereof.

(7) When an office copy of an order of discharge or an acknowledgment of satisfaction in the prescribed (*n*) form is lodged with the registrar, he may enter discharge or satisfaction of the registered pending action to which it refers, and may issue a certificate in the prescribed (*n*) form of such discharge or satisfaction.

Repealed enactments.

These sub-sections take the place of sect. 2 (*o*) of the Lis Pendens Act, 1867, and sect. 2 (*o*) of the Crown Debts and Judgments Act, 1860.

Subs. (8). Re-registration.

Sub-sect. (8) is as follows:—

(8) The registration of a pending action shall cease to have effect at the expiration of five years from the date of registration, but may be renewed from time to time, and, if renewed, shall have effect for five years from the date of renewal.

Sect. 3. Purchasers.

Sect. 3 contains provisions for the protection of purchasers. In the Land Charges Act "purchaser" means any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land, and "purchase" has a corresponding meaning (*p*); but, as will be seen, the proviso to sub-sect. (1) and sub-sect. (3) of sect. 3 only apply in the case of a purchaser of a "legal estate" (*q*) in good faith for money or money's worth without notice of an available act of bankruptcy.

Sect. 3 is as follows:—

Protection of purchasers against unregistered pending actions.

3.—(1) A pending action shall not bind a purchaser without express notice thereof unless it is for the time being registered pursuant to this Part of this Act:

Provided that as respects a petition in bankruptcy, this subsection only applies in favour of a purchaser of a legal estate in good faith, for money or money's worth, without notice of an available act of bankruptcy.

(2) As respects any transfer or creation of a legal estate, a petition in bankruptcy filed after the commencement of this Act, which is not for the time being registered as a pending action, shall not be notice or evidence of any act of bankruptcy therein alleged.

(*n*) See L. C. Rules, 1925, r. 10.
(*o*) Repealed, L. C. Act, s. 24, and Schedule.
(*p*) L. C. Act, s. 20 (8).
(*q*) See Table of Definitions, above, Part I., Chapter VII.

(3) The title of a trustee in bankruptcy acquired after the commencement of this Act shall be void as against a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy claiming under a conveyance made after the date of registration of the petition in bankruptcy as a pending action, unless, at the date of the conveyance, either the registration of the pending action is in force, or the receiving order is registered pursuant to Part III. of this Act.

Notice.

It will be seen that in the first part of sub-sect. (1) "express notice" is mentioned, but in the proviso to that sub-section and in sub-sect. (3) the expression used is "notice." In the Settled Land Act and the Property Act "notice" includes constructive notice (*q*), but there is no definition of "notice" in the Land Charges Act. It is thought that in the proviso to sub-sect. (1) and in sub-sect. (3) of sect. 3 of that Act "notice" means express notice.

(*q*) See Table of Definitions, above, Part I., Chapter VII.

CHAPTER III.

ANNUITIES (*a*).

Definition of "annuity."

In this Part of the Act the expression "annuity" means a rentcharge or an annuity for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives created after the 25th April, 1859, and before the commencement of the Land Charges Act, and not being a rentcharge or an annuity created by a marriage settlement or a will (*b*).

Repealed enactments.

This definition is taken from sects. 12 and 14 (*c*) of the Judgments Act, 1855, which provided, in effect, that an annuity or rentcharge granted after the passing of that Act (*d*), otherwise than by marriage settlement or will, for a life or lives, or for any estate determinable on a life or lives, must be registered (*e*) against the name of the person whose estate was intended to be affected, otherwise the same would not affect any lands, tenements or hereditaments against purchasers, mortgagees or creditors.

Closing of register.

No annuity is to be entered in the register of annuities after the commencement of the Act (*f*), and the register is to be closed when all the entries therein have been vacated, or the prescribed (*g*) evidence of the satisfaction, cesser or discharge of all the annuities has been furnished (*h*).

Annuities registered before the commencement of the Act.

An annuity registered *before* the commencement of the Act in the register of annuities may remain registered until the

(*a*) This is the subject of Part II. of the Act, comprising sects. 4 and 5.
(*b*) L. C. Act, s. 4 (5).
(*c*) Both repealed, L. C. Act, s. 24, and Schedule.
(*d*) Namely, on the 26th April, 1855.
(*e*) As to the mode of registration, see Treatise, Vol. I., p. 419, note (*y*).
(*f*) Sect. 4 (1).
(*g*) See L. C. Rules, 1925, r. 10. (*h*) Sect. 4 (4).

Discharge of annuities so registered.

entry is vacated in the prescribed (*h*) manner, on the prescribed (*h*) evidence as to satisfaction, cesser or discharge being furnished (*i*), and where an acknowledgment in the prescribed (*h*) form of satisfaction, cesser or discharge is lodged with the registrar, he may enter satisfaction, cesser or discharge of the registered annuity to which it refers, and may issue a certificate in the prescribed (*h*) form of such satisfaction, cesser or discharge (*k*).

L. C. Act, s. 5.

Sect. 5 of the Act provides as follows:—

Purchasers(*i*).

Protection of purchasers, &c. against unregistered annuities.

5. An annuity which before the commencement of this Act was capable of being registered in the register of annuities shall be void as against a creditor or a purchaser of any interest in the land charged therewith unless the annuity is for the time being registered in the register of annuities or in the register of land charges as hereinafter provided.

Registration as land charge.

An "annuity" created before the commencement of the Act and not at such commencement registered in the register of annuities cannot, after such commencement, be so registered, but may, after such commencement, be registered as a land charge of Class E (*l*).

Annuity created after commencement of Act.

An "annuity" created after the commencement of the Act cannot be registered at all, but takes effect as an equitable interest.

Overreaching of registered annuity.

In certain cases (*m*) an "annuity," although registered, will be overreached by a conveyance of the legal estate in the land affected thereby.

(*h*) See L. C. Rules, 1925, r. 10.
(*i*) Sect. 4 (2).
(*k*) Sect. 4 (3), replacing 23 & 24 Vict. c. 115, s. 2.
(*l*) Sect. 10 (1), below, p. 414.
(*m*) See L. C. Act, s. 22 (1), below, p. 422.

CHAPTER IV.

WRITS AND ORDERS AFFECTING LAND (*a*).

L. C. Act, s. 6.

SECT. 6 of the Act is as follows:—

Register of writs and orders affecting land.

6.—[(1) There may be registered (*b*) in the register of writs and orders—

[L. C. Act, 1888, s. 5 (1); L. C. Act, 1900, s. 2 (1) (2).]

(a) any writ or order affecting land issued or made by any Court for the purpose of enforcing a judgment, statute or recognizance, whether obtained on behalf of the Crown or otherwise, or for the purpose of enforcing any inquisition finding a debt due to the Crown, or any obligation or specialty made to the Crown;

(b) any order appointing a receiver or sequestrator of land;]

(c) any receiving order in bankruptcy made after the commencement of this Act, whether or not it is known to affect land.

[L. C. Act, 1888, s. 5 (2).]

[(2) Every entry made pursuant to this section shall be made in the name of the] estate owner or other [person whose land,] if any, [is affected by the writ or order registered.]

[Ib. (3).] Re-registration.

[(3) The registration of a writ or order in the said register ceases to have effect at the expiration of five years from the date of registration, but may be renewed from time to time, and, if renewed, shall have effect for five years from the date of renewal.]

(4) No fee shall be charged for the registration of a receiving order in bankruptcy if the application therefor is made by an official receiver.

[S. L. Act, 1890, s. 19.] Vacating and discharge of registration.

(5) [The registration of a writ or order affecting land may be vacated pursuant to an order of the Court or a judge thereof.]

[See 23 & 24 Vict. c. 115, s. 2.]

(6) When an office copy of an order for discharge, or an acknowledgment of satisfaction in the prescribed (*c*) form, is lodged with the registrar, he may enter discharge or satisfaction of the registered writ or order to which it refers, and may issue a certificate in the prescribed (*c*) form of such discharge or satisfaction.

Subs. 1 (a). "Judgment."

In the Act of 1888 (*d*) "judgment" does not include an order made by a Court having jurisdiction in bankruptcy in

(*a*) This is the subject of Part III. of the Act, comprising sects. 6 and 7.

(*b*) The bearing of the words "may be registered" has already been considered; above, p. .

(*c*) See L. C. Rules, 1925, r. 10.

(*d*) Sect. 4. As the Act of 1900 is to be construed as one with the Act of 1888 (see L. C. Act, 1900, s. 6 (3)), expressions defined in the Act of 1888 will have the same meaning in the Act of 1900, unless the contrary appears.

the exercise of that jurisdiction, but, save as aforesaid, includes any order or decree having the effect of a judgment. In the new Act (*e*) "judgment" includes any order, rule or decree having the effect of a judgment.

Subs. 1 (c). Change in the law.

The reason for the change in the language of the definition is, of course, that under the new Act a receiving order in bankruptcy is capable of registration in the register of writs and orders, and this whether or not it is known to affect land, but only if made after the commencement of the Act.

L. C. Act, s. 7.

Sect. 7 of the Act is as follows:—

Protection of purchasers against unregistered writs and orders.

7.—(1) [Every such writ and order as is mentioned in the last preceding section, and every delivery in execution or other proceeding taken pursuant to any such writ or order, or in obedience thereto, shall be void as against a purchaser (*f*) of the land unless the writ or order is for the time being registered pursuant to this Part of this Act:]

[L. C. Act, 1888, s. 6; L. C. Act, 1900, s. 3.]

Provided that as respects a receiving order in bankruptcy, this subsection only applies in favour of a purchaser (*f*) of a legal estate (*f*) in good faith, for money or money's worth, without notice of an available act of bankruptcy.

(2) The title of a trustee in bankruptcy acquired after the commencement of this Act shall be void as against a purchaser (*f*) of a legal estate (*f*) in good faith for money or money's worth without notice of an available act of bankruptcy, claiming under a conveyance (*f*) made after the date of registration of the petition in bankruptcy as a pending action, unless, at the date of the conveyance (*f*), either the registration of the pending action is in force or the receiving order is registered pursuant to this Part of this Act.

Subss. (1) and (2). "Notice."

The meaning of "notice" in the Land Charges Act has already been referred to (*g*).

(*e*) Sect. 20 (5).
(*f*) For the meaning of these expressions in the L. C. Act, see Table of Definitions, above, Part I., Chapter VII.
(*g*) Above, p. 395.

CHAPTER V.

DEEDS OF ARRANGEMENT AFFECTING LAND (*a*).

Definition of "deed of arrangement."

In the Land Charges Act "deed of arrangement" has the same meaning as in the Deeds of Arrangement Act, 1914 (*b*).

L. C. Act, s. 8.

Sect. 8 of the Act is as follows:—

Register of deeds of arrangement affecting land.

[L. C. Act, 1888, ss. 7, 8.]

8.—(1) [A deed of arrangement affecting land may be registered (*c*) in the register of deeds of arrangement affecting land, in the name of the debtor.]

(2) [The registration may be made on the application of a trustee of the deed, or of a creditor assenting to or taking the benefit of the deed.]

(3) [The registration may be vacated pursuant to an order of the Court or a judge thereof.]

(4) The registration of a deed of arrangement in the said register shall cease to have effect at the expiration of five years from the date of registration, but may be renewed from time to time, and if renewed shall have effect for five years from the date of renewal:

Provided that nothing in this subsection shall affect any registration made under any enactment replaced by this Act until the expiration of one year from the commencement of this Act.

Subs. (4). Re-registration.

The provision in sub-sect. (4) for re-registration is new. Under the corresponding repealed enactment registration once for all was sufficient.

Proviso.

The effect of the proviso to sub-sect. (4) appears to be that down to the end of the year 1926 registration under the repealed enactment will be effective, although, before the expiration of that period, it is more than five years old and the deed of arrangement has not been re-registered under sub-sect. (4).

L. C. Act, s. 9.

Sect. 9 of the Act is as follows:—

Protection of purchasers against unregistered deeds of arrangement.

[L. C. Act, 1888, s. 9.]

[9. Every deed of arrangement, whether made before or after the commencement of this Act, shall be void as against a purchaser of any land comprised therein or affected thereby unless the deed is] for the time being [registered] pursuant to this Part of this Act.

(*a*) This is the subject of Part IV. of the Act, comprising sects. 8 and 9.

(*b*) L. C. Act, s. 20 (3). For such meaning, see Treatise, Vol. I., p. 561.

(*c*) For the bearing of the words "may be registered," see above, p. 392.

CHAPTER VI.

LAND CHARGES (*a*).

Section i.—*Preliminary.*

Definition of "land charge."

In the Land Charges Act "land charge" means a land charge of every class and includes a local land charge (*b*).

L. C. Act, s. 10. "Register of land charges." Subs. (1). Classes of land charges.

By sub-sect. (1) of sect. 10 of the Act five classes, defined in that sub-section, of "charges on, or obligations affecting, land may be registered (*c*) as land charges in the register of land charges." These classes are distinguished by the letters A, B, C, D, and E (*d*).

Can only affect a legal estate.

From the language of this sub-section, and, in particular, the references to "the legal estate affected," it seems clear that a charge, whether legal or equitable, can be a land charge only if it affects a legal estate in land.

Charges on "equitable interests."

Charges on, or other "dealings with," equitable interests are now governed by the rule in *Dearle* v. *Hall*, and must be protected by the appropriate notice (*e*), and, it would seem, need not and cannot be registered as land charges.

May become land charges.

It is thought that a charge which, when created, is not a land charge because it affects only an equitable interest, may become a land charge, if and when the equitable interest becomes a legal estate, *e.g.*, a mortgage of an estate in fee simple in remainder, when the estate falls into possession.

(*a*) This is the subject of Part V. of the Act, comprising sects. 10 to 14.

(*b*) L. C. Act, s. 20 (7).

(*c*) For the operation of the words "may be registered," see above, p. 392.

(*d*) None of these classes includes "a local land charge," which is dealt with separately: see L. C. Act, s. 15, below, p. 418.

(*e*) See above, Part III., Chapter IX., pp. 190 *et seq.*

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Re-registration.

Re-registration periodically is not required for the protection of a land charge against purchasers, as it is in the case of pending actions and writs and orders affecting land.

Mode of registration.

Sub-sects. (2) and (3) of sect. 10 of the Act provide as follows:—

(2) A land charge shall be registered in the name of the estate owner whose estate is intended to be affected except that, in the case of a land charge registered before the commencement of this Act, under any enactment replaced by this Act, in the name of a person not being the estate owner, it may remain so registered until it is registered in the name of the estate owner in the prescribed (*f*) manner.

(3) Where a land charge is not created by an instrument, short particulars of the effect of the charge shall be furnished with the application to register the charge.

Subs. (2). "Estate owner."

Sub-sect. (2) replaces sect. 10 of the Act of 1888, which provided that land charges might be registered in the register of land charges (1) in the case of freehold land, in the name of the person beneficially entitled to the first estate of freehold at the time of the creation of the land charge; (2) in the case of copyhold land (*g*), in the name of the tenant on the court rolls at the time of the creation of the land charge; with a proviso that where the person by or on behalf of whom the application was made pursuant to which the land charge was created was beneficially entitled to a lease for lives or life at a rent (*h*) or to a term of years, the land charge should be registered also in the name of that person.

"Estate owner" means the owner of a "legal estate" (*i*), but an infant is not capable of being an estate owner (*i*). As the legal estate must, under the new conveyancing, always be vested in the person or persons entitled in possession, whether beneficially or in a fiduciary or representative capacity, the estate owner must be the absolute owner, tenant for life, statutory owner, trustees or trustee for sale, or personal representative, as the case may be, for the time being entitled in possession.

(*f*) See Land Charges Rules, 1925.
(*g*) As to the enfranchisement of copyhold land, see above, Part II., Chapter II., pp. 62 *et seq.*
(*h*) As to the conversion of such leases into terms of years, see above, Part II., Chapter IV., pp. 95 *et seq.*
(*i*) See Table of Definitions, above, Part I., Chapter VII.

There is no definition of "instrument" in the Land Charges Act, but probably it has the same meaning in that Act as in the Property and Settled Land Acts, namely, as not including a statute unless the statute creates a settlement (*k*). If so, a land charge "not created by an instrument" will mean or include a land charge created by the mere operation of a statute, *e.g.*, "a limited owner's charge" (*l*).

Subs. (3). "Instrument."

Sect. 12 of the Act enacts as follows:—

L. C. Act, s. 12.

12.—(1) Except as in this section provided, [the expenses incurred by the person entitled to a land charge created before] or after [the commencement of this Act in causing the charge to be registered in] the appropriate register [shall be deemed to form part of the land charge, and shall be recoverable by him accordingly on the day for payment of any part of the land charge next after such expenses are incurred.]

Expenses of registering land charges. [L. C. Act, 1888, s. 11.]

(2) This section does not apply to the expenses incurred in registering a land charge of Class E or in registering as a land charge a restrictive covenant, an equitable easement or an estate contract (*m*).

Sect. 11 of the Act of 1888 applied only to the expenses incurred in registering a land charge created before the commencement of *that* Act (*n*).

Subs. (1). Expenses.

In sub-sect. (1) of sect. 12 of the new Act the words "the appropriate register" are substituted for the words "the register of land charges," because in certain cases (*o*) under the new Act registration in some other register is substituted for registration in the register of land charges.

"The appropriate register."

As we have seen (*p*), references in the Property and Settled Land Acts to registration under the Land Charges Act apply to any registration made under any statute which is by the Land Charges Act to have effect as if registration had been made under that Act.

Equivalent registration.

Sub-sect. (8) of sect. 10 of the Act re-enacts sect. 14 of the Act of 1888 by providing that the registration of a land charge

Vacating the registration of land charges.

(*k*) See Table of Definitions, above, Part I., Chapter VII.
(*l*) L. C. Act, s. 10 (1), Class C (ii), below, p. 407.
(*m*) For the land charges referred to in sub-sect. (2), see below, pp. 407, 412, 414.
(*n*) Namely, the 1st January, 1889. See L. C. Act, 1888, s. 2, repealed by the Statute Law Revision Act, 1908.
(*o*) See L. C. Act, ss. 10 (5), 10 (6) and 15 (3), below, pp. 415, 417, 418.
(*p*) Above, p. 25.

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may be vacated pursuant to an order of the Court or a judge thereof.

Section ii.—*Land Charges of Class A.*

Class A. "Pursuant to an application."

Class A is confined to land charges created "pursuant to the application of some person" either before or after the commencement of the Act, and is substantially identical with a "land charge" as defined in the Act of 1888 (*q*). A land charge, as so defined, was the only kind of land charge which could be registered under the Act of 1888, and, by reason of the reference in the proviso to sect. 10 (*r*) of that Act to "the person by or on behalf of whom the application was made pursuant to which the land charge was created," was held to be confined to a land charge created "pursuant to the application of some person" and not to include a charge created *in invitum*, *e.g.*, under sect. 257 of the Public Health Act, 1875 (*s*).

Definition of Class A.

Class A is defined as follows (*t*):—

[L. C. Act, 1888, s. 4.]

Class A:—[A rent, or annuity, or principal money payable by instalments or otherwise, with or without interest, being a charge (otherwise than by deed) upon land] created pursuant to the application of some person either before or after the commencement of this Act—

(i) [under the provisions of any Act of Parliament, for securing to any person either the money spent by him or the costs, charges and expenses incurred by him under such Act, or the money advanced by him for repaying the money spent, or the costs, charges, and expenses incurred by another person under the authority of an Act of Parliament; or

24 & 25 Vict. c. 133.

(ii) under section thirty-five of the Land Drainage Act, 1861; or

13 & 14 Geo. 5, c. 9.

(iii) under] section twenty or section forty-one of the Agricultural Holdings Act, 1923, or [any previous similar enactment]; or

8 & 9 Geo. 5, c. 54.

(iv) under section four or section six of the Tithe Act, 1918; or

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(*q*) L. C. Act, 1888, s. 4. The definition was restricted by the context of the Act, as mentioned below.

(*r*) Above, p. 402.

(*s*) *Reg.* v. *Vice-Registrar of Office of Land Registry*, 24 Q. B. D. 178. Under the L. C. Act a charge created under sect. 257 of the Public Health Act, 1875, is "a local land charge": see sect. 15 (1), below, p. 418.

(*t*) L. C. Act, s. 10 (1), Class A.

(v) under section one of the Tithe Annuities Apportionment Act, 1921; or

(vi) under paragraph (6) of the Twelfth Schedule to the Law of Property Act, 1922 (*u*). 11 & 12 Geo. 5, c. 20.

[but not including a rate or scot.] 12 & 13 Geo. 5, c. 16.

A land charge of Class A for securing money, created before or after the commencement of the Act, takes effect, *when registered*, as if it had been created by a deed of "charge by way of legal mortgage" (*v*), but without prejudice to the priority of the charge (*w*). Effect of land charge of Class A.

13.—(1) [A land charge] of Class A [created after the thirty-first day of December, eighteen hundred and eighty-eight (*y*), shall be void as against a purchaser of the land charged therewith or of any interest in such land, unless the land charge is registered in the register of land charges] before the completion of the purchase. Protection of purchasers (*x*). [L. C. Act, s. 12.]

(a) Land charge of Class A created after 31st Dec., 1888.

In this sub-section the words "unless the land charge," &c., take the place of the words "unless and until such land charge is registered in the register of land charges in the manner mentioned in this Act" in the repealed section. Under the new enactment the crucial time is the completion of the purchase. A search, therefore, for land charges by or on behalf of a purchaser should be made at the latest practicable time before such completion. Time for searching.

Sect. 14 (1) of the Act provides as follows:—

(b) Land charge of Class A created before 1st Jan., 1889. [L. C. Act, 1888, s. 13.]

14.—(1) [After the expiration of one year from the first conveyance (*x*), occurring on or after the first day of January, eighteen hundred and eighty-nine (*y*), of a land charge] of Class A [created before that date, the person entitled thereto shall not be able to recover the land charge or any part thereof as against a purchaser of the land charged therewith or of any interest in the land, unless the land charge is registered in the register of land charges before the completion of the purchase.]

It is thought that in sects. 13 (1) and 14 (1) the words "any interest" mean any equitable interest, as distinguished from "the land charged," that is, the legal estate. "Any interest."

(*u*) See above, Part II., Chapter II., p. 76.
(*v*) See Table of Definitions, above, Part I., Chapter VII.
(*w*) L. C. Act, s. 11.
(*x*) See Table of Definitions, above, Part I., Chapter VII.
(*y*) That is, after the commencement of the L. C. Act, 1888: see above, p. 403, note (*n*).

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Section iii.—*Land Charges of Class B.*

Definition of Class B.

Class B is defined as follows (*z*):—

Class B:—A charge on land (not being a local land charge) of any of the kinds described in Class A, created otherwise than pursuant to the application of any person, either before or after the commencement of this Act, but if created before such commencement only if acquired under a conveyance (*a*) made after such commencement.

Difference between Classes A and B.

It will be seen that a land charge of Class B does not include "a local land charge" (*b*), and differs from a land charge of Class A only in that (1) the former is not, and the latter is, "created pursuant to the application of some person," and (2) the former, if created *before* the commencement of the Act, does not require to be protected by registration unless and until it is acquired under a "conveyance" (*a*) made *after* such commencement. One year from the *first* conveyance, occurring after such commencement, of a land charge of Class B created before such commencement is allowed for the registration of such a land charge (*c*).

Effect of land charge of Class B.

A land charge of Class B for securing money, created before or after the commencement of the Act, takes effect, *when registered*, as if it had been created by a deed of "charge by way of legal mortgage" (*d*), but without prejudice to the priority of the charge (*e*.)

Protection of purchasers against land charges of Class B.

Sect. 13 (2) of the Act provides as follows:—

(a) Created after 31st Dec., 1925.

(2) A land charge of Class B, Class C or Class D, created or arising after the commencement of this Act, shall (except as hereinafter provided) be void as against a purchaser (*f*) of the land charged therewith, or of any interest (*g*) in such land, unless the land charge is registered in the appropriate register (*h*) before the completion of the purchase:

(*z*) L. C. Act, s. 10 (1), Class B.
(*a*) For the definition of "conveyance," see Table of Definitions, above, Part I., Chapter VII. It does not include a *devolution, e.g.*, on the death or bankruptcy of the holder.
(*b*) See L. C. Act, s. 15 (1), below, p. 418.
(*c*) L. C. Act, s. 14 (2), below, p. 407.
(*d*) See Table of Definitions, above, Part I., Chapter VII.
(*e*) L. C. Act, s. 11.
(*f*) See Table of Definitions, above, Part I., Chapter VII.
(*g*) See above, p. 405. (*h*) See above, p. 403.

Provided that, as respects a land charge of Class D and an estate contract created or entered into after the commencement of this Act, this subsection only applies in favour of a purchaser of a legal estate for money or money's worth.

(b) Created before 1st Jan., 1926.

Sect. 14 (2) of the Act provides as follows:—

(2) After the expiration of one year from the first conveyance (*g*) occurring after the commencement of this Act of a land charge of Class B or Class C created before such commencement, the person entitled thereto shall not be able to enforce or recover the land charge or any part thereof as against a purchaser (*h*) of the land charged therewith, or of any interest (*i*) in the land, unless the land charge is registered in the appropriate register (*j*) before the completion of the purchase.

Section iv.—*Land Charges of Class C.*

Definition of Class C.

Class C is defined as follows (*k*):—

Class C:—A mortgage charge or obligation affecting land of any of the following kinds, created either before or after the commencement of this Act, but if created before such commencement only if acquired under a conveyance (*l*) made after such commencement, namely:—

(i) Any legal mortgage not being a mortgage protected by a deposit of documents relating to the legal estate affected, and (where the whole of the land affected is within the jurisdiction of a local deeds registry) not being registered in the local deeds register (in this Act called a "puisne mortgage"); and

(ii) Any equitable charge acquired by a tenant for life or statutory owner under the Finance Act, 1894, or any other statute, by reason of the discharge by him of any death duties or other liabilities, and to which special priority is given by the statute (in this Act called "a limited owner's charge"); and

57 & 58 Vict. c. 30.

(iii) Any other equitable charge, which is not secured by a deposit of documents relating to the legal estate affected and does not arise or affect an interest arising under a trust for sale or a settlement and is not included in any other class of land charge (in this Act called "a general equitable charge"); and

(iv) Any contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option of purchase, a right of pre-emption or any other like right (in this Act referred to as "an estate contract").

(*g*) See above, p. 406, note (*a*).
(*h*) See Table of Definitions, above, Part I., Chapter VII.
(*i*) See above, p. 405. (*j*) See above, p. 403.
(*k*) L. C. Act, s. 10 (1), Class C.
(*l*) See above, p. 406, note (*a*).

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Registration when necessary of land charge of Class C.

A mortgage charge or obligation affecting land of any of the kinds specified respectively in paragraphs (i), (ii), (iii) and (iv) of this definition, if created *after* the commencement of the Act, should, in order to obtain protection, be registered forthwith. Any such mortgage charge or obligation, if created *before* such commencement need not, in order to obtain protection, be registered, unless and until it changes hands by virtue of a "conveyance" (*m*) made *after* such commencement. One year from the *first* conveyance (*m*), occurring *after* such commencement, of a land charge of Class C created *before* such commencement, is allowed for the registration of such a land charge (*n*).

Registration of "puisne mortgage."

It is, however, provided by sub-sect. (7) of sect. 10 of the Act that a "puisne mortgage" created *before* the commencement of the Act "may be registered" as a land charge before any transfer of the mortgage is made. It is thought that the words "may be registered" have not here their usual significance (*o*), but merely give the holder an *option* to register before any transfer of the mortgage is made.

Class C. Sub-class (i). Legal mortgage.

It will be seen that sub-class (i) of Class C comprises only *legal* mortgages. There is no definition of "legal mortgage" in the Land Charges Act, but presumably it has the same meaning in that Act as in the Property and Settled Land Acts (*p*), namely, a mortgage by demise or sub-demise, or a "charge by way of legal mortgage," which, as we have seen (*q*), has the same operation and effect as a mortgage by demise or sub-demise.

Legal estate.

As from the commencement of the Property Act, every legal mortgage of land, whether freehold or leasehold, and whether created before or after the commencement of that Act, "affects" the legal estate of the mortgagor, and itself "creates" a legal estate or its equivalent (*q*); and is a mortgage "secured by a legal term of years absolute or by a charge by way of legal mortgage" (*r*).

(*m*) See above, p. 406, note (*a*).
(*n*) See L. C. Act, s. 14 (2), above, p. 407.
(*o*) See above, p. 392. As to a "puisne mortgage" created before the commencement of the Property Act, see sect. 2 (5) (c) of that Act, above, p. 205.
(*p*) See Table of Definitions, above, Part I., Chapter VII.
(*q*) Above, Part III., Chapter III., pp. 111, 117.
(*r*) See L. P. Act, s. 90 ("Realisation of equitable charges by the Court"), above, p. 127.

Legal mortgage protected by deposit of title deeds.

A legal mortgage which is "protected by a deposit of title deeds relating to the legal estate affected" will almost necessarily rank as a first mortgage (*s*), if there be any other subsisting mortgage of the same land, and in any case does not require to be registered as a land charge (*t*).

"Puisne mortgage."

A legal mortgage not so protected ranks as, and is in the Act called (*u*), a "puisne mortgage," and requires to be protected by registration as a land charge, subject as mentioned above (*v*) where it was created *before* the commencement of the Act, and subject as mentioned hereafter (*w*) where it affects *exclusively* land situate within the jurisdiction of a local deeds registry.

Priorities as between puisne mortgages.

Sect. 97 (*x*) of the Property Act provides that every mortgage affecting a legal estate in land made *after* the commencement of that Act, *whether legal or equitable* (not being a mortgage protected by the deposit of documents relating to the legal estate affected), shall rank according to its date of registration as a land charge pursuant to the Land Charges Act (*y*).

Definition of "puisne mortgage."

It will be seen that "puisne mortgages" in the marginal note to this section of the Property Act includes equitable as well as legal mortgages, whereas in the Land Charges Act (*z*) "puisne mortgage" includes only legal mortgages.

Definition of "equitable mortgage."

There is no definition of "equitable mortgage" or "equitable charge" in any of the Consolidation Acts; but the expressions appear to be convertible and to mean any mortgage or charge affecting a *legal estate* (*a*) in land which is not a "legal mortgage," or, in other words, is "not secured by a legal term of years absolute or by a charge by way of legal mortgage" (*b*).

(*s*) See L. P. Act, s. 13 ("Effect of possession of documents"), above, Part III., Chapter XV., p. 220.

(*t*) This is the case also with an equitable mortgage so protected: see below, p. 410.

(*u*) L. C. Act, s. 10 (1), Class C (i), above, p. 407.

(*v*) P. 408.

(*w*) Section vii, below, p. 415. (*x*) Above, p. 129.

(*y*) This section does not apply to mortgages or charges of registered land, or of land within the jurisdiction of a local deeds registry.

(*z*) L. C. Act, s. 10 (1), Class C (i), above, p. 407.

(*a*) As to mortgages or charges affecting "equitable interests" in land, see above, p. 401.

(*b*) See L. P. Act, s. 90 ("Realisation of equitable charges by the Court"), above, p. 127.

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How created.

An equitable mortgage or equitable charge on a legal estate in land may be created by a "deposit of documents relating to the legal estate affected," with or without an accompanying deed or memorandum of charge; or by a deed or memorandum of charge not accompanied by such a deposit; or by statute (*c*). But though a mortgage or charge on land, in order to be an equitable mortgage or charge within the meaning of the Land Charges Act, must *affect* a legal estate, it will be a legal and not an equitable mortgage within such meaning if it *creates* a legal estate, either expressly by demise or sub-demise, or by operating as a "charge by way of legal mortgage" (*d*).

Equitable mortgages not requiring to be registered.

From sect. 97 (*e*) of the Property Act it appears that an equitable mortgage or charge, if constituted or protected by a deposit of the documents relating to the legal estate affected will, equally with a legal mortgage so protected, be exempt from the requirement of registration as a land charge; and that this is so is confirmed by the use of the words "which is not secured by a deposit of documents relating to the legal estate affected" in paragraph (iii) of the definition of Class C (*f*).

Equitable mortgages requiring registration.

Equitable mortgages or charges affecting a legal estate in land which are not so protected will fall under one or the other of sub-classes (ii) and (iii) of Class C (*f*).

Class C. Sub-class (ii). "Limited owner's charge" (*g*).

Sect. 9 (6) of the Finance Act, 1894, provides that a person having a limited interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge as if the estate duty in respect of that property had been raised by means of a mortgage to him (*h*).

"Limited owner."

Under the definition of "a limited owner's charge" (*g*) the only limited owner in whose favour such a charge can arise is a "tenant for life" (*i*) or "statutory owner" (*i*). As we have seen (*k*), the legal estate which is the subject of the settlement must be vested in the tenant for life or statutory owner, and it

(*c*) See Class C, paragraph (ii), above, p. 407.
(*d*) See Table of Definitions, above, Part I., Chapter VII.
(*e*) Above, p. 129.
(*f*) Above, p. 407.
(*g*) L. C. Act, s. 10 (1), Class C (ii), above, p. 407.
(*h*) See Treatise, Vol. II., pp. 1237 and note (*u*), 1250 and note (*a*).
(*i*) See Table of Definitions, above, Part I., Chapter VII.
(*k*) Above, Part IV., Chapter I., pp. 252—3.

is this legal estate which will be affected by the limited owner's charge. As this charge ranks as an "equitable charge," it creates no legal estate in the limited owner, but only an equitable interest, which can be overreached by a disposition under the Settled Land Act by the tenant for life or statutory owner (*l*).

Class C. Sub-class (iii). "General equitable charge" (*m*). Definition.

Any equitable charge which (1) affects a legal estate (*n*); (2) is not secured by a deposit of documents relating to the legal estate affected; (3) does not arise, or affect an interest arising, under a trust for sale or a settlement; and (4) is not included in any other class of land charge, is "a general equitable charge" within the meaning of the Land Charges Act.

Must affect a legal estate.

Of these requirements No. (1) is not expressed, but appears to be implied by the reference in No. (2) to "the legal estate affected" and by the consideration that charges affecting equitable interests are not capable of registration as land charges (*n*).

Not interests under a trust for sale or a settlement.

Requirement No. (3) seems unnecessary in view of requirement No. (1), for an equitable charge which arises, or affects an interest arising, under a trust for sale or a settlement, can, it is thought, affect an equitable interest only.

Effect of definition.

If so, then the effect of the definition appears to be that "a general equitable charge" includes every equitable charge affecting a legal estate which (1) is not secured by a deposit of documents relating to the legal estate affected, and (2) is not included in any other class of land charge (*o*).

Class C. Sub-class (iv). "Estate contract" (*p*).

The definition of "estate contract" in the Land Charges Act is substantially the same as that in the Property Act (*q*), except that the former does, and the latter does not, describe the person by whom the contract is entered into, namely, as being either an estate owner or a person entitled at the date of the contract to have a legal estate conveyed to him.

(*l*) See L. C. Act, s. 22 (1), below, p. 422.
(*m*) L. C. Act, s. 10 (1), Class C (iii), above, p. 407.
(*n*) As to mortgages or charges of "equitable interests," see above, p. 401.
(*o*) Under the definition of land charge (above, p. 401) a "local land charge" is a class of land charge.
(*p*) L. C. Act, s. 10 (1), Class C (iv), above, p. 407.
(*q*) See Table of Definitions, above, Part I., Chapter VII. As to an estate contract made before the commencement of the Property Act, see sect. 2 (5) (d) of that Act, above, p. 205.

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Protection of purchasers against land charges of Class C.

As we have seen (*r*), the provisions of sect. 13 (2) (but as respects "an estate contract" entered into after the commencement of the Act only in favour of a purchaser of a legal estate for money or money's worth) and sect. 14 (2) of the Act apply to land charges of Class C, as well as to land charges of Class B.

Section v.—*Land Charges of Class D.*

Class D.

The definition of Class D. is as follows (*s*):—

> Class D:—A charge or obligation affecting land of any of the following kinds, namely:—
>
> (i) Any charge acquired by the Commissioners of Inland Revenue under any statute passed or hereafter to be passed for death duties leviable or payable on any death which occurs after the commencement of this Act; and
>
> (ii) A covenant or agreement (not being a covenant or agreement made between a lessor and lessee) restrictive of the user of land entered into after the commencement of this Act (in this Act referred to as "a restrictive covenant"); and
>
> (iii) Any easement right or privilege over or affecting land created or arising after the commencement of this Act, and being merely an equitable interest (in this Act referred to as an "equitable easement").

Sub-class (i). Charge for "death duties" (*t*). Estate duty.

By sect. 9 (1) of the Finance Act, 1894, a rateable part of the estate duty on an estate in proportion to the value of any property which does not pass to the executor as such shall be a first charge on the property in respect of which duty is leviable: provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice (*u*).

Succession duty.

Succession duty is a first charge on the interest of the successor and of all persons claiming in his right in all the real or leasehold property in respect whereof the duty is assessed (*v*). The interest of the successor will in many cases be an equitable interest only; but in the provisions of the Property Act, which must now be referred to, the expression "death duties" no doubt includes succession duty.

(*r*) Above, pp. 406, 407.
(*s*) L. C. Act, s. 10 (1), Class D, above, p. 401.
(*t*) See Table of Definitions, above, Part I., Chapter VII.
(*u*) See Treatise, Vol. II., pp. 1236 *et seq.*
(*v*) See *ibid.*, p. 1201.

Primary liability for death duties.

Sub-sect. (1) of sect. 16 of the Property Act provides that a personal representative shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise (*w*). Sub-sect. (2) of the same section provides that in every other case the "estate owner" (*x*) (other than a purchaser who acquires a legal estate after the charge has attached and free from such charge) shall be accountable for all the duties aforesaid which become leviable or payable in respect of his estate in the land, or any interest therein capable of being overreached by his "conveyance" (*x*), being a conveyance to a purchaser made under the Settled Land Act (*y*), or pursuant to a trust for sale (*z*).

Charge for death duties attaches to legal estate.

Having regard to these provisions (*a*), and to sub-sect. (2) (*b*) of sect. 10 of the Land Charges Act, it is thought that a charge for death duties attaches to the legal estate and must be registered in the name of the estate owner.

When it may be registered.

Sub-sect. (4) of sect. 10 of the Act provides as follows:—

(4) Nothing in this section shall be deemed to authorise the Commissioners of Inland Revenue to register a land charge in respect of any claim for death duties unless the duty has become a charge on the land, and the application to register any such charge shall state the duties in respect of which the charge is claimed, and, so far as possible, shall define the land affected, and such particulars shall be entered or referred to in the register.

Class D. Sub-class (ii). "Restrictive covenant" (*c*).

It will be noticed that a covenant or agreement restrictive of the user of land, if made between a lessor and lessee, or entered into *before* the commencement of the Act (*d*), is not "a restrictive covenant" within the meaning of the Act, nor capable of registration as a land charge.

(*w*) See A. E. Act, below, Part VII.
(*x*) See Table of Definitions, above, Part I., Chapter VII.
(*y*) See S. L. Act, s. 72, above, p. 326.
(*z*) See L. P. Act, s. 27 (1), above, p. 170; sect. 2, above, pp. 203 *et seq.*
(*a*) As to sect. 16 of the L. P. Act, see further, below, Part IX., Section XXI.
(*b*) Above, p. 402.
(*c*) L. C. Act, s. 10 (1), Class D (ii), above, p. 412.
(*d*) As to a restrictive covenant or agreement so entered into, see L. P. Act, s. 2 (5) (a), above, p. 204.

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Class D. Sub-class (iii). "Equitable easement" (*e*).

Legal easement.

Meaning of "equitable easement."

An easement, right or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute, is a legal estate (*f*), and therefore a legal easement. An "equitable easement" within the definition apparently denotes an easement, right or privilege in or over land for some estate or interest *less* than a legal estate, and so conferring only an equitable interest. An "equitable easement" is a land charge and capable of being registered as such only if created or arising *after* the commencement of the Act (*g*).

Protection of purchasers against land charges of Class D.

As we have seen (*h*), sect. 13 (2) of the Act applies to a land charge of Class D, but only in favour of a purchaser of a legal estate for money or money's worth.

In the case of death duties.

Sub-sect. (1) of sect. 17 (*i*) of the Property Act provides that where a charge in respect of death duties is not registered as a land charge, a purchaser of a legal estate shall take free therefrom, unless the charge for duties attached before the commencement of that Act (*k*), and the purchaser had notice of the facts giving rise to the charge.

Section vi.—*Land Charge of Class E.*

Class E.

The definition of Class E is as follows (*l*):—

> Class E:—An annuity within the meaning of Part II. of this Act created before the commencement of this Act and not registered in the register of annuities.

An "annuity" within the meaning of Part II. of the Act (*m*), if created *after* the commencement of the Act, cannot be registered either in the register of annuities (*m*), or as a land charge.

(*e*) L. C. Act, s. 10 (1), Class D (iii), above, p. 412.
(*f*) See L. P. Act, s. 1 (2) (a), above, p. 98.
(*g*) As to an equitable easement created *before* such commencement, see L. P. Act, s. 2 (5) (b), above, p. 205.
(*h*) Above, p. 406.
(*i*) As to this section, see further, below, Part IX., Section XXI. The section does not apply to registered land: see sub-sect. (5).
(*k*) A charge for duties so attaching cannot be registered as a land charge. In Part I. of the L. P. Act, "purchaser" means purchaser for money or money's worth.
(*l*) L. C. Act, s. 10 (1), Class E, above, p. 401.
(*m*) See above, p. 396.

Section vii.—*Local Deeds Registries.*

Registration in Middlesex and Yorkshire.

The Middlesex Registry Act, 1708 (*n*), required the registration of "all deeds and conveyances whereby any hereditaments may be in any way affected at law or in equity" (*o*). By the Yorkshire Registries Act, 1884 (*p*), all "assurances," as defined in the Act, and wills affecting lands within any of "the three ridings," may be registered under the Act (*q*).

As respects legal estates after 1925.

Sect. 11 (*r*) of the Property Act provides, by sub-sect. (1), that it shall not be necessary to register a memorial of any instrument made after the commencement of that Act in any local deeds registry unless the instrument operates to transfer or create a legal estate, or to create a charge thereon by way of legal mortgage; nor shall the registration of a memorial of any instrument not required to be registered affect any priority.

As respects equitable interests.

Notwithstanding this enactment, sub-sect. (6) of sect. 10 of the Land Charges Act provides as follows:—

L. C. Act, s. 10 (6).

(6) In the case of a general equitable charge (*s*), restrictive covenant (*t*), equitable easement (*u*) or estate contract (*v*) affecting land within any of the three ridings (*x*), the registration in the prescribed (*y*) manner in the appropriate local deeds registry of the document creating it shall be sufficient in place of registration under this Act, and the registration shall, as respects such land, have effect as if the land charge created by the document had been registered under this Act.

(*n*) 7 Anne, c. 20, s. 1. For the local jurisdiction of the registry under this Act, see Treatise, Vol. I., p. 365.

(*o*) See *ibid.*, p. 362, note (*m*).

(*p*) Sect. 4. This Act was amended by the Yorkshire Registries Amendment Act, 1885.

(*q*) See Treatise, Vol. I., p. 364, and note (*b*).

(*r*) Above, p. 200.

(*s*) Above, p. 407.

(*t*) Above, p. 412.

(*u*) Above, p. 412.

(*v*) Above, p. 407.

(*x*) In the L. C. Act "the three ridings" has the same meaning as in the Yorkshire Registries Act, 1884 (see sect. 20 (12)). In the latter Act "north riding" means the north riding of the county of York; "east riding" means the east riding of the county of York, including lands within the town or county of Kingston-upon-Hull; "west riding" means the west riding of the county of York, including lands within the wapentake known as "the Ainsty"; and "the three ridings" means the north riding, the east riding, and the west riding as above defined. (See sect. 3.)

(*y*) See L. C. Rules, 1925, r. 15.

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Applies only to Yorkshire.

It will be seen that this sub-section applies only to land in Yorkshire. The reason for this is to be found in the following section of the Land Charges Act:—

7 Anne, c. 20, not to apply to certain instruments.

[L. C. Act, 1900, s. 4.]

18. [It is not necessary to register under the Middlesex Registry Act, 1708—

(a) any deed of arrangement, land charge of Class A or other instrument made or created on or after the thirtieth day of July, nineteen hundred (*z*);] or

(b) any land charge (except a puisne mortgage) of Class B, Class C or Class D created or made after the commencement of this Act;

[which] is or [was capable of registration under] this Act, or [any enactment replaced by this Act.]

Effect of subs. (6).

The effect of the sub-section appears to be to extend the definition of "assurances" in the Yorkshire Registries Act, 1884, so as to include any such document as is mentioned in the sub-section, and to make registration in Yorkshire of any such document "equivalent" (*a*) to registration thereof in the register of land charges.

Priority of "assurances" of land in Yorkshire.

By the Yorkshire Registries Act, 1884 (*b*), "assurances" entitled to be registered under that Act have priority according to the date of registration thereof, notwithstanding any actual or constructive notice, except in cases of actual fraud.

"Puisne mortgage"—(a) of land wholly within a register county:

In the Land Charges Act, as we have seen (*c*), "puisne mortgage" means a legal mortgage not being a mortgage protected by a deposit of documents relating to the legal estate affected, and (where the *whole* of the land affected is within the jurisdiction of a local deeds registry) not being registered in the local deeds register.

A puisne mortgage, as so defined, creates a legal estate or charge by way of legal mortgage, and accordingly, if registered in the local deeds registry, will have the benefit of sect. 197 (*d*) of the Property Act.

(b) of land partly within a register county.

It seems that a puisne mortgage affecting land *part* only of which is within the jurisdiction of a local deeds registry, must,

(*z*) The date of the passing of the L. C. Act, 1900.
(*a*) See above, p. 392. (*b*) Sect. 14.
(*c*) Above, p. 407. (*d*) Above, p. 200.

in order to obtain protection, be registered as a land charge in the register of land charges.

Section viii.—*Land Charges by Companies.*

Sub-sect. (5) of sect. 10 of the Act provides as follows:—

"Equivalent registration" (*e*) under Cos. Act, 1908. 8 Edw. 7, c. 69. L. C. Act, s. 10 (5). Application of subs. (5).

(5) In the case of a land charge for securing money, created by a company, registration under section ninety-three of the Companies (Consolidation) Act, 1908, shall be sufficient in place of registration under this Act, and shall have effect as if the land charge had been registered under this Act.

It will be seen that the sub-section applies only to companies incorporated under the Companies Acts.

(*e*) Above, p. 392.

CHAPTER VII.

LOCAL LAND CHARGES (*a*).

L. C Act, s. 15 (1). "Local land charge" defined.

"A LOCAL land charge" is defined by sub-sect. (1) of sect. 15 of the Act, which provides as follows:—

Registration of local land charges.

55 & 56 Vict. c. 57.

To be registered by proper officer of local authority.

Protection of purchaser for money or money's worth of a legal estate.

15.—(1) Any charge (hereinafter called "a local land charge") acquired either before or after the commencement of this Act by the council of any administrative county, metropolitan borough, or urban or rural district, or by the corporation of any municipal borough, or by any other local authority under the Public Health Acts, 1875 to 1907 (*b*), the Metropolis Management Acts, 1855 to 1893, or the Private Street Works Act, 1892, or under any similar statute (public general or local or private) passed or hereafter to be passed, which takes effect by virtue of the statute, shall be registered (*c*) in the prescribed manner by the proper officer of the local authority, and shall (except as hereinafter mentioned in regard to charges created or arising before the commencement of this Act) be void as against a purchaser for money or money's worth of a legal estate in the land affected thereby, unless registered in the appropriate register before the completion of the purchase.

Subs. (5). Saving for local land charges created before 1926.

Sub-sect. (5) of sect. 15 provides as follows:—

(5) Nothing in this section operates to impose any obligation to register any local land charge created or arising before the commencement of this Act except after the expiration of one year from such commencement or to discharge a purchaser from liability in respect of any local land charge which is not for the time being required to be registered.

Subs. (2). Incidents of local land charge.

By sub-sect. (2), except as expressly provided by this section, the provisions of the Act relating to a land charge of Class B (*d*) are to apply to a local land charge.

Subs. (3). "Equivalent registration" (*e*) of local land charges.

Sub-sect. (3) is as follows:—

(3) As regards a local land charge, the registration by the proper officer shall (without prejudice to the right of the registrar also to

(*a*) L. C. Act, Part VI., comprising only sect. 15. A "local land charge" is a land charge within the meaning of the Act: see above, p. 401.

(*b*) These Acts are amended by the Public Health Act, 1925.

(*c*) For the effect of the words "shall be registered," see above, p. 392, and note (*b*).

(*d*) See above, p. 406. (*e*) Above, p. 392.

register the charge if and when the prescribed application and information is made and furnished to him) take the place of registration by the registrar, and, in reference thereto, the proper officer of the local authority shall have all the powers and be subject to the same obligations as the registrar has or is subject to in regard to a land charge.

Subs. (4). Provisional registration of "general charge."

Sub-sect. (4) provides as follows:—

(4) Where a local authority has expended money for any purpose which, when the work is completed and any requisite resolution is passed or order is made, will confer a charge upon land, the proper officer of the local authority may in the meantime register a local land charge in his register against the land generally, without specifying the amount, but the registration of any such general charge shall be cancelled within the prescribed time not being less than one year after the charge is ascertained and allotted, and thereupon the specific local land charges shall, unless previously discharged, be registered as of the date on which the general charge was registered.

Subs. (6). Separate rules.

In exercise of the power for this purpose given by sub-sect. (6), separate rules (*f*) have been made under the Act in reference to local land charges for giving effect to sect. 15, and in particular for the several purposes specified in that sub-section.

Subs. (7). "Restrictive covenant."

Sub-sect. (7) is as follows:—

(7) For the purposes of this section, any prohibition of or restriction on the user or mode of user of land or buildings enforceable by any local authority by virtue of any statute or any order, scheme or instrument made in pursuance of any statute, and any resolution passed by a local authority to prepare or adopt a town planning scheme, shall be deemed to be a restrictive covenant, and where arising or passed after the commencement of this Act shall be registered (*g*) by the proper officer as a local land charge:

Provided that any such prohibition, restriction or resolution affecting an area or district may be registered generally against the area or district by reference to the statute, order, scheme or instrument under which it is imposed.

Registered land.

Sect. 15 applies to local land charges affecting registered as well as unregistered land (*h*).

(*f*) Namely, the Local Land Charges Rules, 1925, S. R. & O., 1925, No. 1148/L. 34, dated November 19th, 1925.

(*g*) For the force of the words "shall be registered," see above, p. 392, and note (*b*).

(*h*) Sub-sect. (8). As to registered land, see, further, L. C. Act, s. 23, below, p. 423.

CHAPTER VIII.

SEARCHES AND OFFICIAL SEARCHES.

PART VII. of the Act, dealing with Searches and Official Searches, re-enacts sect. 16 of the Act of 1888, and, with some modifications, applies the provisions of sect. 2 (*a*) of the Conveyancing Act, 1882, to searches under the Land Charges Act (*b*). It comprises two sections only, which are as follows:—

Power to make searches.

[L. C. Act, 1888, s. 16.]

[16. Any person may search in any register or index kept in pursuance of this Act on paying the prescribed fee.]

Official certificates of search.

[C. A. 1882, s. 2 (1).]

17.—[(1) Where any person requires search to be made] at the registry [for entries of any matters or documents, whereof entries are required or allowed to be made] in the registry by this Act, [he may] on payment of the prescribed fee lodge at the registry [a requisition in that behalf.]

[Ib. (2).]

[(2)] The registrar [shall thereupon make the search required, and shall] issue [a certificate setting forth the result thereof.]

[Ib. (3).]

[(3) In favour of a purchaser] or an intending purchaser, [as against persons interested under or in respect of matters or documents whereof entries are required or allowed as aforesaid, the certificate, according to the tenor thereof, shall be conclusive, affirmatively or negatively, as the case may be.]

[Ib. (4).]

[(4) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires a certificate of result of search, and other sufficient particulars.]

[Ib. (6).]

(5) [If any officer, clerk, or person employed in the registry commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate under this section, he shall be guilty of a misdemeanour] and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

[Ib. (7).]

(6) [Nothing in this section or in any rule made] under this Act [affects any right which any person may have independently of this

(*a*) Repealed L. C. Act, s. 24, and Schedule. The whole Act is repealed by the L. P. Act, s. 207, and Seventh Schedule.

(*b*) See L. C. Act, 1888, s. 17.

section to make any search in the] registry; [and every such search may be made as if this section or any such rule had not been enacted or made.]

(7) [Where a solicitor obtains a certificate of result of search under this section, he shall not be answerable in respect of any loss that may arise from error in the certificate.] [C. A. 1882, s. 2 (8).]

(8) [Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.] [Ib. (9).]

(9) [Where such persons obtain such a certificate without a solicitor, they shall also be protected in like manner.] [Ib. (10).]

CHAPTER IX.

GENERAL (*a*).

L. C. Act, s. 21.

Effect of registration under any Part of Act.

Sect. 21 enacts as follows:—

21. Where any charge or other matter is capable of registration under two or more Parts of this Act, it shall be sufficient if it is registered under any one Part, and if registered under such one Part the person entitled to the benefit thereof shall not be prejudicially affected by the provisions of another Part by reason only that it was not also registered under that other Part.

L. C. Act, s. 22.

Saving of overreaching powers.

Sect. 22 is as follows:—

22.—(1) The registration of any charge, annuity, or other interest under this Act shall not prevent the charge, annuity, or interest being overreached under any provision contained in any other statute, except where otherwise provided by that other statute.

(2) The registration as a land charge of a puisne mortgage or charge shall not operate to prevent that mortgage or charge being overreached in favour of a prior mortgagee or a person deriving title under him where, by reason of a sale foreclosure or otherwise, the right of the puisne mortgagee or subsequent chargee to redeem is barred.

Subs. (1). Interests which may be over-reached.

Notwithstanding registration under the Land Charges Act of (a) an "annuity" within the meaning of Part II. of that Act (*b*); and (b) "a limited owner's charge" (*c*), or "a general equitable charge" (*d*) within the meaning of that Act, such annuity or charge will be overreached (1) by a disposition under sect. 21 (*e*) of the Settled Land Act; (2) by a conveyance under sect. 72 (*f*) of that Act; and (3) a conveyance under subsect. (2) of sect. 2 (*g*) of the Property Act.

(*a*) L. C. Act, Part VIII., ss. 18 to 26. See, for sect. 18, above, p. 416; for sect. 19, above, p. 391; for sect. 20 ("Definitions"), above, Part I., Chapter VII.; for sect. 24 ("Repeals"), above, p. 14; and for sect. 26 ("Short title, commencement and extent"), above, pp. 7 and 8.

(*b*) Above, p. 396.

(*c*) Above, p. 410.

(*d*) Above, p. 411.

(*e*) Above, Part IV., p. 307.

(*f*) Above, Part IV., p. 326.

(*g*) Above, Part III., p. 204.

Interests not within the L. C. Act.

Sub-sect. (5) of the last-mentioned section provides (*g*) that so far as regards certain interests therein specified, created before the commencement of the Property Act, and accordingly not within the provisions of the Land Charges Act, a purchaser of a legal estate shall only take subject thereto if he has notice thereof, and the same are not overreached under the provisions contained in or in the manner referred to in that section.

L. C. Act, s. 23.

Sect. 23 of the Act is as follows:—

Application to registered land.

23.—(1) As respects pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, this Act shall not apply thereto, if and so far as they affect registered land, and can be protected under the Land Registration Act, 1925, by lodging or registering a creditor's notice, restriction, caution, inhibition or other notice.

(2) Nothing in this Act imposes on the registrar any obligation to ascertain whether or not a pending action, writ, order, deed of arrangement or land charge affects registered land.

Subs. (1).

Protection of charges affecting registered land.

The subject of how charges affecting registered land may be protected by a creditor's notice, &c., will be considered hereafter (*h*).

L. C. Act, s. 25.

Sect. 25 of the Act provides as follows:—

Application to the Crown.

25. The provisions of this Act bind the Crown, but nothing in this Act shall be construed as rendering land owned by or occupied for the purposes of the Crown subject to any charge to which, independently of this Act, it would not be subject.

(*g*) Above, Part III., p. 204.
(*h*) Below, Part VIII., Chapter V.

PART VII.

The Administration Act.

CHAPTER I.

PRELIMINARY.

Section i.—*Application and Re-enactments.*

Application of A. E. Act.

As we have seen (*a*), the Administration Act (in this Part usually referred to as "the Act" or "the new Act") applies, for the most part, only in the case of deaths occurring after the commencement of the Act; and of the enactments thereby repealed (*b*) the more numerous and important, namely, those specified in Part I. of the Second Schedule to the Act, are repealed only so far as they apply to deaths occurring after the commencement of the Act.

Re-enactments.

The enactments so specified, the effect or combined effect of which is re-enacted or reproduced, with or without amendment (*c*), in sections of the new Act, appear to be confined to those set out in the first column of the following Table:—

(*a*) Above, Part I., pp. 15, 16.

(*b*) A. E. Act, s. 56, and Second Schedule, above, p. 16.

(*c*) The amendments are, to some extent, consequent upon the changes in the law effected by Part I. of the L. T. Act, 1897, and, in particular, the extension thereby to real estate of the law governing the devolution to his personal representatives of the chattels real of a deceased person.

TABLE I.

Repealed enactment.	Corresponding Section of A. E. Act.	Marginal note to corresponding Section.
13 Edw. 1 (*Stat. Westm. Sec.*), c. 19 ..... 31 Edw. 3, st. 1, c. 11..	Sect. 21	Rights and liabilities of administrator.
13 Edw. 1 (*Stat. Westm. Sec.*), c. 23 ..... 4 Edw. 3, c. 7	Sect. 26 (1)	
32 Hen. 8, c. 37, s. 1	(3) (4) ..	Rights of action by and against personal representative.
3 & 4 Will. 4, c. 42, s. 2.. ss. 37, 38	(2) (5) .. (4)	
25 Edw. 3, st. 5, c. 5....	Sect. 7	Executor of executor represents original testator.
31 Edw. 3, st. 1, c. 11 .. 21 Hen. 8, c. 5, s. 2.... 20 & 21 Vict. c. 77, s. 73	Sect. 10.....	Discretion of Court as to persons to whom administration is to be granted.
21 Hen. 8, c. 5, ss. 2, 6..	Sect. 25	Duty of personal representative as to inventory.
s. 6	Sect. 4	Summons to executor to prove or renounce.
43 Eliz. c. 8	Sect. 28	Liability of person fraudulently obtaining or retaining estate of deceased.
22 & 23 Chas. 2, c. 10, s. 5	Sect. 44	Power to postpone distribution.
s. 6	Sect. 19	Administration with will annexed.
29 Chas. 2, c. 3, ss. 10, 11 11 Geo. 4 & 1 Will. 4, c. 47, ss. 2, 9..... 3 & 4 Will. 4, c. 104 ... 32 & 33 Vict. c. 46	Sect. 32	Real and personal estate of deceased are assets for payment of debts.
30 Chas. 2, c. 7..... 4 Will. & Mary, c. 24, s. 12	Sect. 29	Liability of estate of personal representative.
38 Geo. 3, c. 87, ss. 1, 5. 20 & 21 Vict. c. 77, s. 74 21 & 22 Vict. c. 95, s. 18	Sect. 18	Grant of special administration where personal representative is abroad.
38 Geo. 3, c. 87, s. 6 ...	Sect. 20 (1)	Administration during minority of executor.
11 Geo. 4 & 1 Will. 4, c. 40.	Sect. 49 (b)	Application to cases of partial intestacy.

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TABLE I.—*Continued.*

Repealed enactment.	Corresponding Section of A. E. Act.	Marginal note to corresponding Section.
11 Geo. 4 & 1 Will. 4 c. 47, ss. 11, 12..... 2 & 3 Vict. c. 60 ..... 11 & 12 Vict. c. 87	Sect. 38	Right to follow property, and powers of the Court in relation thereto.
17 & 18 Vict. c. 113.... 30 & 31 Vict. c. 69 .... 40 & 41 Vict. c. 34	Sect. 35	Charges on property of deceased to be paid primarily out of the property charged.
20 & 21 Vict. c. 77, ss. 70—72 21 & 22 Vict. c. 95, s. 22	Sect. 16	Administration pending litigation.
20 & 21 Vict. c. 77, s. 75..	Sect. 15	Executor not to act while administration is in force.
s. 76..	Sect. 17	Continuance of legal proceedings after revocation of temporary administration.
ss. 77—8	Sect. 27	Protection of persons acting on probate or administration.
s. 79 21 & 22 Vict. c. 95, s. 16	Sect. 5	Cesser of right of executor to prove.
s. 19	Sect. 9	Vesting of estate of intestate between death and grant of administration.
38 & 39 Vict. c. 77, s. 10..	Sect. 34 (1)	Administration of assets.
47 & 48 Vict. c. 71, ss. 2, 3	Sect. 30 (1) (2) ...	Provisions applicable where administration granted to nominee of the Crown.

Repeal and re-enactment of certain sections of the A. E. Act.

As we have seen (*d*), certain sections of the Administration Act are repealed and re-enacted by the Supreme Court of Judicature (Consolidation) Act, 1925 (in this Chapter referred to as "the Judicature Act"). The sections so repealed (including some of those mentioned in Table I.), and the sections of the Judicature Act by which they are replaced, are set forth in the following Table:—

(*d*) Above, Part I., p. 15.

[TABLE II.

TABLE II.

Repealed Section of A. E. Act.	Substituted Section of Jud. Act.	Marginal note to substituted Section.
Sect. 4	Sect. 159	Summons of executor to prove or renounce.
Sect. 10	Sect. 162 (*e*)	Discretion of Court as to persons to whom administration is to be granted.
Sect. 11	Sect. 167 (7)....	Administration bonds.
Sect. 12.....	Sect. 160	Provisions as to the number of personal representatives.
Sect. 13.....	Sect. 155	Power to grant representation of real and personal estate separately or together.
Sect. 14.....	Sect. 161	Power to grant representation to a trust corporation.
Sect. 16.....	Sect. 163	Administration *pendente lite*.
Sect. 18	Sect. 164	Grant of special administration where personal representative is abroad.
Sect. 19.....	Sect. 166	Administration with will annexed.
Sect. 20.....	Sect. 165	Administration during minority of executor.

Jud. Act, Part VII., ss. 150 to 175. Subject matter.

All the sections of the Judicature Act which are mentioned in Table II. are contained in Part VII. of that Act, dealing with "Probate Causes and Matters," and comprising sects. 150 to 175.

Part VII. of the Judicature Act relates mainly to matters of procedure, and the following provisions only of that Part of that Act need be mentioned:—

Jud. Act, s. 160 (*f*). "Provisions as to the number of personal representatives."

Sect. 160 provides that probate or administration shall not be granted to more than four persons in respect of the same property, and contains provisions applicable where there is a minority or where a life interest arises under the will or intestacy (*g*).

Jud. Act, s. 161. "Power to grant repre-

By sect. 161 (1) the Court may grant probate or representation to a "trust corporation" either solely or jointly with

(*e*) This section (see sub-sect. (2)) applies only in the case of persons dying after the date (the 1st January, 1926) of the commencement of the Judicature Act, and the High Court, in granting administration in the case of persons dying before that date, is to act in accordance with the principles and rules in accordance with which it would have acted if the Judicature Act had not passed.

(*f*) This section applies to grants made after the date of the commencement of the Judicature Act, whether the testator or intestate died before or after that date. (Sub-sect. (3).)

(*g*) Sub-sects. (1) and (2).

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sentation to a trust corporation."

another person. By sub-sect. (2) probate or administration shall not be granted to a syndic or nominee on behalf of a trust corporation, and sub-sect. (4) contains provisions for the vesting in or transfer to a corporation of property vested in a syndic on its behalf. By sub-sect. (5) this section is to have effect whether the intestate (*h*) died before or after the commencement of the Judicature Act, and no such vesting or transfer as aforesaid is to operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

Jud. Act, s. 165. "Administration during minority of executor."

By sect. 165 (2), where a testator by his will appoints an infant to be an executor, the appointment shall not operate to transfer any interest in the property of the deceased to the infant, or to constitute him a personal representative for any purpose, unless and until probate is granted to him under sub-sect. (1) after he attains the age of twenty-one years.

Jud. Act, s. 175. "Interpretation of terms in Part VII., and saving."

Sub-sect. (1) of sect. 175 contains definitions of "trust corporation" (*i*) and other expressions used in Part VII. of the Judicature Act.

Sub-sects. (2) and (3) are as follows:—

(2) Nothing in this Act shall operate to extend to any real estate to which any person dying before the first day of January, eighteen hundred and ninety-eight, or any person dying on or after that day and before the commencement of this Act was entitled, any enactments or rules of law which did not immediately before the said first day of January or the commencement of this Act, as the case may be, extend to the real estate of such a person or to confer on the High Court with respect to any such real estate any probate jurisdiction which was not immediately before the said first day of January or immediately before the commencement of this Act, as the case may be, vested in the High Court constituted under the Act of 1873.

(3) The provisions set out in Part II. of the Fifth Schedule to this Act shall, subject in the case of a person dying on or after the first day of January, eighteen hundred and ninety-eight, and before the commencement of this Act to the provisions of the Land Transfer Act, 1897, have effect with respect to the probate or revocation of the probate of the will of any person dying as is mentioned in subsection (2) of this section which affects real estate and with respect to the evidentiary effect in actions concerning real estate of probate or administration granted in respect of the estate of a person so dying.

(*h*) It is thought that "testator or" should have been inserted before "intestate."

(*i*) The definition of "trust corporation" is the same as that in the L. P. Act, above, Part I., Chapter VII.

Paragraph 2 of Part II. of the Fifth Schedule to the Judicature Act provides as follows:—

Jud. Act, Fifth Sched., Part II.

Evidentiary effect of probate of wills affecting real estate.

2.—(a) A party to any proceeding who seeks to establish a devise or other testamentary disposition affecting real estate, may give to the opposite party, ten days at least before the trial or proceeding in which the proof is intended to be adduced, notice that he intends to give in evidence, as proof of the devise or other testamentary disposition, the probate of the will or the letters of administration with the will annexed, or a copy thereof stamped with the seal of the Court.

(b) Where any such notice has been given, the probate, letters of administration, or a copy thereof, stamped as aforesaid, shall be sufficient evidence of the will and of its validity and contents, notwithstanding that it has not been proved in solemn form or otherwise declared valid in a contentious cause or matter, unless the party receiving the notice, within four days after the receipt thereof, gives notice that he disputes the validity of the devise or testamentary disposition.

Section ii.—*Repeals.*

Enactments repealed and not re-enacted.

The repeal (*j*) of such of the enactments specified in Part I. of the Second Schedule to the Administration Act as are not re-enacted is due, in most cases, to the changes effected by Part IV. (*k*) of the Act in the law relating to the devolution of the beneficial interest in the real or personal estate of a person dying intestate as to such real or personal estate after the commencement of the Act.

Succession *ab intestato* to real estate.

The enactments so repealed and not re-enacted, which relate to the succession to the real estate of a person so dying, include the Dower Act, 1833. The Inheritance Act, 1833, and sect. 19 of the Law of Property Act, 1859, amending the same, are not repealed, but are "affected" in the manner indicated in the Ninth Schedule to the Law of Property (Amendment) Act, 1924 (*l*).

Succession *ab intestato* to personal estate.

The enactments so repealed and not re-enacted, which relate to the succession to the personal estate of a person so dying, include the Statute of Distribution (22 & 23 Car. 2, c. 10 (*m*)),

(*j*) The repeal of the enactments specified in Part I. of the Second Schedule to the A. E. Act applies only in the case of deaths occurring after the commencement of that Act; see above, Part I., p. 16.
(*k*) Below, Chapter V.; and see above, Part I., p. 21, I.
(*l*) Above, Part I., pp. 5, 6.
(*m*) As to sects. 5 and 6 of this Act, see Table I., above, p. 425.

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the Statute 1 James 2, c. 17, amending and continuing the same, and the Intestates' Estates Act, 1890.

Meaning of "Statutes of Distribution."

The meaning to be attributed, unless the context otherwise requires, to references to any Statutes of Distribution in (1) instruments coming into operation *after* the commencement of the Act, and (2) instruments coming into operation *before* such commencement, is defined as follows in sect. 50 of the Act:—

A. E. Act, s. 50.

Construction of documents.

50.—(1) References to any Statutes of Distribution in an instrument inter vivos made or in a will coming into operation after the commencement of this Act, shall be construed as references to this Part (*n*) of this Act; and references in such an instrument or will to statutory next of kin shall be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Part of this Act.

(2) Trusts declared in an instrument inter vivos made, or in a will coming into operation, before the commencement of this Act by reference to the Statutes of Distribution, shall, unless the contrary thereby appears, be construed as referring to the enactments (other than the Intestates' Estates Act, 1890) relating to the distribution of effects of intestates which were in force immediately before the commencement of this Act.

53 & 54 Vict. c. 29.

Sect. (2). Intestates' Estates Act, 1890.

In re Morgan.

The exclusion of the Intestates' Estates Act, 1890, in subsect. (2) of this section is in accordance with the decision in *In re Morgan*, (1920) 1 Ch. 196, where it was held that the only two statutes to which the description "the Statutes of Distribution" could properly be affixed were the Act of Charles II. (22 & 23 Car. 2, c. 10 (*o*)) and the continuing and amending Act of James II. (1 James 2, c. 17), and that the Intestates' Estates Act, 1890, was not an Act proper to be included in the expression "Statutes of Distribution" when used in a document, still less in the phrase used by a testator "statutes for the distribution of the personal estates of intestates."

Continuance of Bankruptcy Act, 1914, s. 130.

Sect. 130 of the Bankruptcy Act, 1914 ("Administration in bankruptcy of estate of person dying insolvent"), is included in the enactments specified in Part I. of the Second Schedule to the Administration Act, which, by sect. 56 of that Act (*p*),

(*n*) Namely, Part IV., below, Chapter V.

(*o*) By the Short Titles Act, 1896, this Act may be cited as "The Statute of Distribution."

(*p*) Above, Part I., p. 16.

are repealed as regards deaths occurring after the commencement of that Act. By sect. 1 (2) of the Expiring Laws Act, 1925 (*q*), and Part II. of the First Schedule thereto, it is enacted that the said section of the Bankruptcy Act, 1914, shall, notwithstanding such repeal, not expire on the date fixed for the repeal thereof, but shall continue permanently in force.

Section iii.—*Retrospective Enactments.*

Sections of the A. E. Act, which apply also to deaths occurring before 1926.

As we have seen (*r*), certain sections of the Administration Act apply to deaths occurring whether before or after the commencement of the Act, namely, sects. 6, 8, and 36 to 43 (inclusive). These will be considered hereafter (*s*) in connection with Chapter VII. of the Treatise, which Chapter treats "Of Devolution on Death."

(*q*) Stat. 15 & 16 Geo. 5, c. 76, passed 10th December, 1925.
(*r*) Above, Part I., pp. 15, 16.
(*s*) Below, Part IX., Section VII.

CHAPTER II.

DEVOLUTION OF REAL ESTATE.

A. E. Act, Part I., ss. 1 to 3. Subject matter.

PART I. (sects. 1 to 3) of the Administration Act treats of the devolution on his "personal representative" (*a*) of "real estate" (*a*) to which a deceased person was entitled "for an interest not ceasing on his death," and, as regards any such interest in real estate, strictly so called, (A) to which the deceased was entitled beneficially, or over which he had and exercised a general power of appointment by will, takes the place of the corresponding provisions in Part I. (*b*) of the Land Transfer Act, 1897; and (B) which he held as a trustee or mortgagee, takes the place of sect. 30 (*c*) of the Conveyancing Act, 1881.

Application of Part I. of the A. E. Act.

Part I. of the Administration Act applies only in the case of deaths occurring after the commencement of the Act (*d*).

A. E. Act, s. 1. Devolution of real estate on personal representative. [See L. T. Act, 1897, s. 1 (1).] [C. A., 1881, s. 30 (1).]

Sect. 1 of the Act is as follows:—

1.—(1) [Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before the commencement of this Act chattels real devolved on the personal representative from time to time of a deceased person.]

(2) [The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers.]

(3) The personal representatives shall be the representative of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate.

(*a*) See Table of Definitions, above, Part I., Chapter VII. For the meaning of "real estate" in Part I. of the A. E. Act, see sect. 3, below, p. 434.

(*b*) *Semble*, not repealed. See above, Part I., p. 5, and note (*i*).

(*c*) Repealed by the L. P. Act so far as it relates to deaths occurring after the commencement of that Act; above, Part I., p. 17.

(*d*) A. E. Act, s. 54, above, Part I., p. 15.

The meaning of this expression is explained in sect. 3 of the Act (*e*).

"Interest not ceasing on his death."

Sect. 2 is as follows:—

A. E. Act, s. 2.

2.—(1) Subject to the provisions of this Act, [all enactments and rules of law,] and all jurisdiction of any Court [with respect to] the appointment of administrators or to [probate or letters of administration, or to dealings before probate in the case of chattels real, and with respect to costs and other matters in the administration of personal estate, in force before the commencement of this Act, and all powers, duties, rights,] equities, obligations, [and liabilities of a personal representative in force at the commencement of this Act with respect to chattels real, shall apply] and attach to the personal representative and shall have effect with respect [to real estate] vested in him, [and] in particular [all such powers of disposition and dealing as were before the commencement of this Act exercisable as respects chattels real by] the survivor or survivors of two or more personal representatives, [as well as by a single personal representative, or by all the personal representatives together, shall be exercisable by the personal representatives or representative of the deceased with respect to his real estate].

Application to real estate of law affecting chattels real.

[L. T. Act, 1897, s. 2 (2).]

[C. A. 1881, s. 30 (1).]

(2) Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Part of this Act shall not, save as otherwise provided as respects trust estates including settled land, be made without the concurrence therein of all such representatives or an order of the Court, but [where probate is granted to one or some of two or more persons named as executors,] whether or not power is reserved to the other or others to prove, [any conveyance of the real estate may be made by the proving executor or executors for the time being, without an order of the Court, and shall be as effectual as if all the persons named as executors had concurred therein].

[C. A., 1911, s. 12 (1).]

(3) Without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real estate shall not, save as hereinafter provided, affect—

[See L. T. Act, 1897, s. 2 (1), (3); *In re Kempster*, (1906), 1 Ch. 446.]

(a) any rule as to marshalling or as to administration of assets;

(b) the beneficial interest in real estate under any testamentary disposition;

(c) any mode of dealing with any beneficial interest in real estate, or the proceeds of sale thereof;

(d) the right of any person claiming to be interested in the real estate to take proceedings for the protection or recovery thereof against any person other than the personal representative.

Subs. (1). "Survivor or survivors."

The words "the survivor or survivors of two or more personal representatives" in sub-sect. (1) take the place of the

(*e*) Below, p. 434.

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words "one only of several joint personal representatives" in sect. 30 (1) of the Conveyancing Act, 1881, and, as "real estate" in Part I. of the Administration Act includes chattels real (*f*), the substituted words suggest that, as regards as well the chattels real as the real estate proper of the deceased, one of two or more personal representatives has no power to act independently of the other or others.

Subs. (2). "Trust estates."

The reference in sub-sect. (2) to the provisions "as respects trust estates including settled land" appears to be to the "special provisions as to settled land" contained in sects. 22 to 24 of the Act (*g*).

Subs. (3). "Save as hereinafter provided."

The words "save as hereinafter provided" in sub-sect. 3 appear to refer to the provisions as to "Administration of Assets" in Part III. of the Act (*h*).

A. E. Act, s. 3. Interpretation of Part I.

Sect. 3 of the Act provides as follows:—

3.—(1) In this Part of this Act "real estate" includes—

(i) Chattels real, and land in possession, remainder, or reversion, and every interest in or over land to which a deceased person was entitled at the time of his death; and

(ii) Real estate held on trust (including settled land) or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land.

[L. T. Act, 1897, s. 1 (2).] (2) [A testator shall be deemed to have been entitled at his death to any interest in real estate passing under any gift contained in his will which operates as an appointment under a general power to appoint by will,] or operates under the testamentary power conferred by statute to dispose of an entailed interest.

(3) An entailed interest of a deceased person shall (unless disposed of under the testamentary power conferred by statute) be deemed an interest ceasing on his death, but any further or other interest of the deceased in the same property in remainder or reversion which is capable of being disposed of by his will shall not be deemed to be an interest so ceasing.

[L. T. Act, 1897, s. 1 (1).] (4) [The interest of a deceased person under a joint tenancy where another tenant survives the deceased is an interest ceasing on his death.]

(5) On the death of a corporator sole his interest in the corporation's real and personal estate shall be deemed to be an interest ceasing on his death and shall devolve to his successor.

This subsection applies on the demise of the Crown as respects all property, real and personal, vested in the Crown as a corporation sole.

(*f*) See sect. 3 (1), below.
(*g*) Below, p. 436.
(*h*) Below, Chapter IV.

A. E. Act, s. 3, subs. (1) (i). Equitable interests.

Paragraph (i) of sub-sect. (1) makes it clear, if it was otherwise doubtful, that there devolves on the personal representative of a deceased person every interest in land, *whether legal or equitable*, to which the deceased was entitled for an interest not ceasing on his death.

Subs. (1) (ii). Settled lands.

As we have seen (*i*), the legal estate (be it an estate in fee simple absolute in possession or a term of years absolute (*k*)) which is the subject of a settlement must be vested in the "tenant for life" (*l*) or "statutory owner" (*l*), and, as the tenant for life or statutory owner is to be deemed to be in the position and to have the duties and liabilities of a trustee for all parties entitled under the settlement (*m*), such legal estate is, for the purposes of Part I. of the Administration Act, treated as "real estate held on trust." Real estate so held will also, of course, include land held at his death by a sole trustee on trust for sale.

Money under a trust for sale.

"Land" in the Consolidation Acts does not include an undivided share in land (*n*). Accordingly, an undivided share in land cannot, as such, devolve on a personal representative under Part I. of the Act, but he will take instead the interest (if any) of the deceased in a corresponding share of the net proceeds of sale of the entirety of the land and in the net rents and profits until sale, if the entirety was unsold at the death of the deceased (*o*).

Equitable chose in action.

Such an interest is, at most, an "equitable interest" in land, and is, perhaps, more accurately described as an "equitable chose in action" (*p*).

Subss. (2) (3). "Entailed interest."

The testamentary power to dispose of an "entailed interest" is conferred by sect. 176 of the Property Act (*q*).

(*i*) Above, Part IV., Chapter I., pp. 252, 253.
(*k*) Above, Part III., Chapter I., pp. 97 *et seq.*
(*l*) See Table of Definitions, above, Part I., Chapter VII.
(*m*) S. L. Act, s. 107 (1), below, Part IX., Section IX.
(*n*) See Table of Definitions, above, Part I., Chapter VII.
(*o*) See above, Part III., Chapter V., pp. 151 *et seq.*
(*p*) See above, Part III., Chapter IX., Section viii., pp. 190 *et seq.*
(*q*) See above, *ibid.*, p. 188.

CHAPTER III.

EXECUTORS AND ADMINISTRATORS.

Section i.—*Preliminary.*

A. E. Act, Part II., ss. 4 to 31. Subject matter.

PART II. of the Act is headed "Executors and Administrators," and comprises sects. 4 to 31, whereof sects. 4 to 21 contain "General Provisions," sects. 22 to 24 contain "Special Provisions as to Settled Land," and sects. 25 to 31 relate to "Duties, Rights, and Obligations." Most of the sections in this Part of the Act have already been noticed (*a*), and it is necessary to consider in this Chapter (*b*) only sects. 9 and 31 and the special provisions as to settled land. *The last-mentioned sections and provisions apply only in the case of deaths occurring after the commencement of the Act.*

A. E. Act, s. 9. "Vesting of estate of intestate between death and grant of administration."

By virtue of sect. 9 of the Act, where a person dies intestate after the commencement of the Act (*c*), his real and personal estate, until administration is granted in respect thereof, will vest in the "Probate judge" (*d*).

A. E. Act, s. 31. "Power to make rules."

In pursuance of the power conferred by sect. 31 of the Act, rules of court have been made for giving effect to the provisions of Part II. of the Act so far as relates to real estate (*e*).

Section ii.—*Special Provisions as to Settled Land.*

A. E. Act, ss. 22 to 24. Where settled land *remains* such on death of deceased.

These provisions appear to be applicable only where "on the death of a tenant for life or statutory owner, or of the survivor of two or more tenants for life or statutory owners in whom the

(*a*) Above, Chapter I.
(*b*) As to sects. 6 and 8, see below, Part IX., Section VII.
(*c*) A. E. Act, s. 54, above, p. 15. As to the vesting in the case of a death intestate before such commencement, see Treatise, Vol. I., Chapter VII., p. 213, note (*z*).
(*d*) See Table of Definitions, above, Part I., Chapter VII.
(*e*) See Non-Contentious Probate Rules, 1925, S. R. & O., 1925, No. 1231/L. 37.

settled land was vested, the land remains settled land" (*f*), and their object is to secure that, in such a case, the land shall vest in the persons, if any, who are at his death the trustees of the settlement thereof, as his "special personal representatives" (*g*).

In such a case it will be the duty of the personal representatives, whether general or special, of the deceased, and whether he died testate or intestate, to convey the land, when so required, to the person who on the death of the deceased becomes the tenant for life or statutory owner (*h*).

Where land *becomes* settled land on death of deceased.

These provisions do not apply to the case where land, unsettled at the death of a testator, is settled by his will (*i*).

A. E. Act, s. 22.

Sect. 22 of the Act is as follows:—

Special executors as respects settled land.

22.—(1) A testator may appoint, and in default of such express appointment shall be deemed to have appointed, as his special executors in regard to settled land, the persons, if any, who are at his death the trustees of the settlement thereof, and probate may be granted to such trustees specially limited to the settled land.

In this subsection "settled land" means land vested in the testator which was settled previously to his death and not by his will.

(2) A testator may appoint other persons either with or without such trustees as aforesaid or any of them to be his general executors in regard to his other property and assets.

A. E. Act, s. 23.

"Provisions where as respects settled land, representation is not granted to the trustees of the settlement."

Sect. 23 of the Act applies to the case where settled land becomes vested in a "personal representative" (*k*), *not being a trustee of the settlement*, upon trust (*l*) to convey the land to, or assent to the vesting thereof, in the tenant for life or statutory owner in order to give effect to a settlement created before the death of the deceased and not by his will, or would, on the grant of "representation" (*k*) to him, have become so vested (*m*).

Subs. (1). Renunciation or revocation.

In such a case, by sub-sect. (1), such representative may—

(a) before representation has been granted, renounce his office in regard only to such settled land without renouncing it in regard to other property;

(*f*) See S. L. Act, s. 7 (1), above, Part IV., Chapter IV., p. 284.
(*g*) See A. E. Act, s. 24, below, p. 439.
(*h*) See S. L. Act, ss. 7, 8, above, Part IV., Chapter IV., pp. 284 to 288.
(*i*) As to this case, see S. L. Act, s. 6, above, *ibid.*, p. 283.
(*k*) See Table of Definitions, above, Part I., Chapter VII.
(*l*) See S. L. Act, s. 7 (1), above, p. 284.
(*m*) A. E. Act, s. 23 (1).

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(b) after representation has been granted, apply to the Court for revocation of the grant in regard to the settled land without applying in regard to other property.

Paragraph (a) applies only to a person, not being a trustee of the settlement, who is named as an executor in the will. Paragraph (b) applies to any such person to whom representation has been granted, whether as executor or as administrator.

Subss. (2) to (4). Application to the Court to appoint special or additional personal representative.

Sub-sects. (2) to (4) contain provisions authorising an application to the High Court for an order appointing a special or additional personal representative in respect of the settled land, and are as follows:—

(2) Whether such renunciation or revocation is made or not, the trustees of the settlement, or any person beneficially interested thereunder, may apply to the High Court for an order appointing a special or additional personal representative in respect of the settled land, and a special or additional personal representative, if and when appointed under the order, shall be in the same position as if representation had originally been granted to him alone in place of the original personal representative, if any, or to him jointly with the original personal representative, as the case may be, limited to the settled land, but without prejudice to the previous acts and dealings, if any, of the personal representative originally constituted or the effect of notices given to such personal representative.

(3) The Court may make such order as aforesaid subject to such security, if any, being given by or on behalf of the special or additional personal representative, as the Court may direct, and shall, unless the Court considers that special considerations apply, appoint such persons as may be necessary to secure that the persons to act as representatives in respect of the settled land shall, if willing to act, be the same persons as are the trustees of the settlement, and an office copy of the order when made shall be furnished to the Principal Probate Registry for entry, and a memorandum of the order shall be endorsed on the probate or administration.

(4) The person applying for the appointment of a special or additional personal representative shall give notice of the application to the Principal Probate Registry in the manner prescribed.

Subs. (3). "Administration."

In the Administration Act, unless the context otherwise requires, "administration" means, with reference to the real and personal estate of a deceased person, letters of administration, whether general or limited, or with the will annexed or otherwise; and "administrator" means a person to whom administration is granted (*n*).

(*n*) A. E. Act, s. 55 (1) (i), (ii).

By sub-sect. (5) rules of court (*o*) may be made for prescribing for all matters required for giving effect to the provisions of sect. 23.

Subs. (5). Rules.

Sect. 24 of the Act is as follows:—

A. E. Act, s. 24.

24.—(1) The special personal representatives may dispose of the settled land without the concurrence of the general personal representatives, who may likewise dispose of the other property and assets of the deceased without the concurrence of the special personal representatives.

Power for special personal representatives to dispose of settled land.

(2) In this section the expression "special personal representatives" means the representatives appointed to act for the purposes of settled land and includes any original personal representative who is to act with an additional personal representative for those purposes.

(*o*) See Non-Contentious Probate Rules, 1925, S. R. & O., 1925, No. 1231/L. 37.

CHAPTER IV.

ADMINISTRATION OF ASSETS.

A. E. Act, Part III., ss. 32 to 44. Subject matter.

PART III. of the Act, headed "Administration of Assets," comprises sects. 32 to 44, whereof those which have a retrospective operation will be considered hereafter (*a*), and *the others, namely, sects.* 32 *to* 35 (*inclusive*) *and sect.* 44 (*a*), *apply only in the case of deaths occurring after the commencement of the Act* (*b*).

A. E. Act, s. 32.

Sect. 32 of the Act, apart from its reference to the statutory power to dispose of entailed interests (*c*), does no more than state the law as it existed at the commencement of the Act. The section is as follows:—

Real and personal estate of deceased are assets for payment of debts.

32.—(1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power (including the statutory power to dispose of entailed interests) disposes by his will, are assets for payment of his debts (whether by specialty or simple contract) and liabilities, and any disposition by will inconsistent with this enactment is void as against the creditors, and the Court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities.

This subsection takes effect without prejudice to the rights of incumbrancers.

(2) If any person to whom any such beneficial interest devolves or is given, or in whom any such interest vests, disposes thereof in good faith before an action is brought or process is sued out against him, he shall be personally liable for the value of the interest so disposed of by him, but that interest shall not be liable to be taken in execution in the action or under the process.

A. E. Act, s. 33. Statutory trust for sale

Sect. 33 of the Act, which is the earliest section of importance relating to intestacy, effects a useful change in the law by

(*a*) See above, Chapter I., Section iii., and below, Part IX., Section VII. Sect. 44 provides that, subject to the foregoing provisions of the Act, a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from the death.

(*b*) A. E. Act, s. 54, above, Part I., p. 15.

(*c*) L. P. Act, s. 176, above, Part III., Chapter IX., p. 188.

and conversion of undisposed-of real or personal estate.

subjecting any real or personal estate as to which a person dies intestate to a trust for sale and conversion, with power to postpone the same, similar to that which is commonly found in wills in regard to the residuary estate of a testator. The section, though somewhat long, is of sufficient importance to merit being set out at length, especially as it introduces the definition of "the residuary estate of the intestate," as to the distribution of which amongst the kindred of the deceased new rules, applicable alike to *real* (*d*) and *personal estate* (*d*) or the property representing the same, and differing widely from those previously in force in regard to the distribution of the *personal estate* (*d*) of an intestate, are established by Part IV. of the Act (*e*).

The section is as follows:—

Trust for sale.

33.—(1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives—

(a) as to the real estate upon trust to sell the same; and

(b) as to the personal estate upon trust to call in sell and convert into money such part thereof as may not consist of money,

with power to postpone such sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the personal representatives see special reason for sale, and so also that, unless required for purposes of administration owing to want of other assets, personal chattels (*f*) be not sold except for special reason.

(2) Out of the net money to arise from the sale and conversion of such real and personal estate (after payment of costs), and out of the ready money of the deceased (so far as not disposed of by his will (*f*), if any), the personal representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the rules of administration contained in this Part of this Act, and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies (*f*) bequeathed by the will (if any) of the deceased.

(*d*) The expressions *real estate* and *personal estate*, when respectively printed in italics, should be understood as being used in their strict meaning, namely, the former as *excluding*, and the latter as *including*, leaseholds or chattels real; or, in other words, with the same respective meanings as in the common form of a full judgment in a creditor's action for the administration of the estate of a deceased person dying before the commencement of the Act. See Seton's Judgments and Orders, 7th ed., Vol. II., p. 1347, Form 2.

(*e*) Below, Chapter V.

(*f*) For the meaning of "personal chattels," "will," and "pecuniary legacy," see Table of Definitions, above, Part I., Chapter VII.

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(3) During the minority of any beneficiary or the subsistence of any life interest and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the said money, or so much thereof as may not have been distributed, in any investments for the time being authorised by statute for the investment of trust money, with power, at the discretion of the personal representatives, to change such investments for others of a like nature.

(4) The residue of the said money and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for the administration purposes aforesaid, is in this Act referred to as "the residuary estate of the intestate."

(5) The income (including net rents and profits of real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs and other outgoings properly attributable to income) of so much of the real and personal estate of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes aforesaid, may, however such estate is invested, as from the death of the deceased, be treated and applied as income, and for that purpose any necessary apportionment may be made between tenant for life and remainderman.

(6) Nothing in this section affects the rights of any creditor of the deceased or the rights of the Crown in respect of death duties.

(7) Where the deceased leaves a will, this section has effect subject to the provisions contained in the will.

Application of section. Partial intestacy.

It will be seen that this section applies not only to cases of total intestacy, but also where the deceased left a will bequeathing "pecuniary legacies" (*g*).

"Real estate."

In the Administration Act, unless the context otherwise requires, "real estate," save as provided in Part IV. of the Act, means real estate, including chattels real, which by virtue of Part I. of the Act devolves on the personal representative of a deceased person (*h*).

Real estate held on trust.

The real estate which devolves on the personal representative of a deceased person by virtue of Part I. of the Act includes chattels real and real estate held on trust (including settled land) (*i*). Clearly sect. 33 cannot apply to settled land, as to which there are special provisions (*k*). Nor can it apply to

(*g*) As to partial intestacy, see A. E. Act, s. 49, below, p. 455.
(*h*) A. E. Act, s. 55 (1) (xix).
(*i*) *Ibid.*, s. 3, above, p. 434. (*k*) Above, Chapter II.

land held on trust (not being settled land), for land so held by the intestate for an interest not ceasing on his death (*e.g.*, on trust for sale or as a bare trustee) must be held by his personal representatives on the trusts affecting the same (*l*).

Subs. (4). "Residuary estate of the intestate."

The definition of "the residuary estate of the intestate" in sub-sect. (4) is important, as the property comprised in such definition is the subject-matter on which operate the new "Statutes of Distribution" (*m*) inaugurated by Part IV. of the Act (*n*).

Subs. (5). Apportionment.

The reference in sub-sect. (5) to any necessary apportionment between tenant for life and remainderman suggests that where, under the power to postpone, property is retained which is not an authorised investment, the income of such property will be subject to the rule in *Howe* v. *Earl Dartmouth* (*o*).

Reversionary interests.

No direction is given as to the apportionment of reversionary interests when they fall into possession. Probably the rule in *In re Earl of Chesterfield's Trusts* (*p*) would be held to apply.

A. E. Act, s. 34. "Administration of assets."

Subs. (1). Insolvent estate.

Sub-sect. (1) of sect. 34 of the Act enacts that where the estate of a deceased person is insolvent his real and personal estate shall be administered in accordance with the Rules set out in Part I. of the First Schedule to the Act.

Part I. of that Schedule is as follows:—

A. E. Act, 1st Sched., Pt. I.

PART I.

RULES AS TO PAYMENT OF DEBTS WHERE THE ESTATE IS INSOLVENT.

1. The funeral, testamentary, and administration expenses have priority.

2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as

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(*l*) This appears to be implied by the words "to the extent of his beneficial interest therein" in sub-sect. (1) of sect. 32 of the Act, above, p. 440.

(*m*) See A. E. Act, s. 50 (1), above, p. 430.

(*n*) Below, Chapter V.

(*o*) 7 Ves. 137. See Jarman on Wills, 6th ed., Vol. II., p. 1235. See also *Meyer* v. *Simonsen*, 5 De G. & Sm. 723. This rule does not apply to the income of leaseholds which is applicable under sub-sect. (2) of sect. 28 of the L. P. Act: *In re Brooker*, (1926) W. N. 93.

(*p*) 24 C. D. 643. See Jarman on Wills, *ubi sup.*, p. 1239; and *In re Baker*, (1924) 2 Ch. 271.

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to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

Rule 1. Funeral expenses, &c.

Rule 1 is in accordance with the previous law, under which the funeral, testamentary, and administration expenses must first be provided for (*q*).

Rule 2. Application of rules in bankruptcy.

Rule 2 re-enacts the substance of sect. 10 of the Judicature Act, 1875, and does not alter the law.

Subs. (2). Retainer.

Sub-sect. (2) of sect. 34 of the Act is as follows:—

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person.

Subject as aforesaid, nothing in this Act affects the right of retainer of a personal representative, or his right to prefer creditors.

Changes in the law.

The law as laid down in this sub-section differs in two respects from that applicable in the case of deaths occurring before the commencement of the Act, in that (1) it extends the right of retainer to *all* the assets of the deceased, whether *real* (*r*) or *personal;* and (2) it deprives the executor of the right to retain for a debt owing to him as a trustee (*s*).

Subs. (3). Solvent estate.

Sub-sect. (3) of sect. 34 provides as follows:—

(3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of Court and the provisions hereinafter contained as to charges on property of the deceased (*t*), and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II. of the First Schedule to this Act.

(*q*) See *In re Pullen*, (1910) 1 Ch. at pp. 570, 571.

(*r*) See *In re Williams*, (1904) 1 Ch. 52.

(*s*) See *Davies* v. *Parry*, (1899) 1 Ch. 602; *In re Harris*, (1914) 2 Ch. 395.

(*t*) As to these provisions, see A. E. Act, s. 35, below, p. 448.

Part II. of the First Schedule to the Act is as follows:— Part VII. Chap. IV.

A. E. Act, 1st. Sched., Part II.

PART II.

ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT.

1. Property of the deceased undisposed of by will, subject to the retention thereout of a fund sufficient to meet any pecuniary legacies.

2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.

3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

5. The fund, if any, retained to meet pecuniary legacies.

6. Property specifically devised or bequeathed, rateably according to value.

7. Property appointed by will under a general power, including the statutory power to dispose of entailed interests, rateably according to value.

8. The following provisions shall also apply—

(a) The order of application may be varied by the will of the deceased.

(b) This part of this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets.

Rule 8.

Saving—

(a) of operation of will.

(b) of incidence of "death duty" on "land."

It will be seen that Rule 8 of Part II. of the Schedule is in the nature of a saving clause, whereof paragraph (a) merely repeats, in a modified form, the words "subject . . . to the provisions, if any, contained in his will" in sub-sect. (3), and paragraph (b) preserves the liability of "land" to answer the "death duty" imposed thereon in exoneration of other assets.

"Death duty."

In the Administration Act "death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on death (*u*), whereof the only duties now affecting land are estate duty and succession duty. Paragraph (b) leaves unaffected the previous law (*v*) under which freehold

(*u*) See Table of Definitions, above, Part I., Chapter VII.

(*v*) This is clear from sub-sect. (3) of sect. 53 of the Act, which section is as follows:—

General savings.

53.—(1) Nothing in this Act shall derogate from the powers of the High Court which exist independently of this Act or alter the distribu-

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land, but not leasehold land (*w*), is subject, in exoneration of other assets, to a charge for its due proportion of estate duty, and succession duty is a charge on the interest of the successor in any land, whether freehold or leasehold (*x*).

Combined effect of A. E. Act, s. 34 (3) and Part II. of 1st Sched.

The combined effect, then, of sub-sect. (3) of sect. 34 of the Act, and of Part II. of the First Schedule to the Act, appears to be that, where the estate is solvent, the order of application of assets is to be in accordance with Rules 1 to 7 (inclusive) of that Part of that Schedule, subject (1) to any relevant rules of court (*y*); (2) to the provisions contained in sect. 35 (*z*) of the Act as to charges on property of the deceased; (3) to the provisions, if any, contained in the will (*a*); and (4) to the incidence, as under the previous law, of the estate duty and succession duty on land.

A. E. Act, 1st Sched., Rules 1 to 7.

Comparison of new with old rules.

The changes in the order of application of assets, effected, subject as above mentioned, by Rules 1 to 7 (inclusive) in Part II. of the First Schedule to the Act (hereinafter referred to as "new" Rules), may be appreciated by comparing them with the Rules (hereinafter referred to as "old" Rules) applicable in the case of a person dying before the commencement of the Act (*b*).

Changes in the law.

Under the old Rules the primary fund for the payment of debts was the *personal estate*, or, if there was a will containing specific bequests, the *personal estate* not specifically bequeathed.

tion of business between the several Divisions of the High Court, or operate to transfer any jurisdiction from the High Court to any other Court.

(2) Nothing in this Act shall affect any unrepealed enactment in a public general Act dispensing with probate or administration as respects personal estate not including chattels real.

(3) Nothing in this Act shall—

(a) alter any death duty payable in respect of real estate or impose any new duty thereon:

(b) render any real estate liable to legacy duty or exempt it from succession duty:

(c) alter the incidence of any death duties.

(*w*) Unless appointed by will in exercise of a general power; see *O'Grady* v. *Wilmot*, (1916) 2 A. C. 231.

(*x*) See Treatise, Vol. II., pp. 1201, 1236, 1238, 1241, 1242.

(*y*) There do not appear to be any such rules.

(*z*) Below, p. 448.

(*a*) That is, if there is a will.

(*b*) The old Rules, numbered 1 to 7, are set out in Seton's Judgments and Orders, 7th ed., Vol. II., pp. 1604 to 1607.

In the new Rules, owing, no doubt, to the assimilation by the new Act of the law governing the devolution on intestacy of the beneficial interest in *real* and *personal estate*, no distinction is drawn between them, and they are included under the common designation of "property," which expression in the Administration Act "includes" a thing in action and any interest in real or personal estate (*c*). Accordingly, in the successive application of each of the new Rules, all "property," whether *real* or *personal*, of the category described in the Rule is applicable *pari passu* (*d*) in or towards payment of the debts.

Real and *personal estate* rank *pari passu* at each stage.

New Rule 1. Property undisposed of the primary asset.

New Rule 1 applies only where there is property of the deceased undisposed of by will. In that case all such property will be the primary asset for the payment of debts, subject to the retention thereout of a fund sufficient to meet "pecuniary legacies," if any. Under the old Rules undisposed of *real estate* came third in the order of application. Now it ranks with undisposed of *personal estate*.

Fund for "pecuniary legacies."

The direction to retain a fund to meet any "pecuniary legacies" appears to be new. Such retention must necessarily be provisional, as under new Rule 5, corresponding to old Rule 5, the retained fund may be required for payment of debts. The object of the direction is, apparently, to avoid the necessity of subsequent marshalling in favour of legatees (*e*).

New Rule 2. Residuary gift.

Under new Rule 2 the asset next liable is property not specifically devised or bequeathed, but included (either by a specific or general description) in a residuary gift, subject again to a direction to retain a fund or supplemental fund to meet pecuniary legacies.

Change in the law as to *real estate*.

Under the old law every devise of *real estate* was specific, even though the items were not specified (*f*), so that *real estate* included in a residuary gift (either by a specific or general description) ranked, for payment of debts, *pari passu* with *real estate* specifically devised and not so included (*f*).

(*c*) A. E. Act, s. 55 (1) (xvii).

(*d*) Apparently it is left to the discretion of the personal representative to resort to either or both, as and when convenient or necessary.

(*e*) See Seton, *ubi sup.*, p. 1607, "Marshalling so as to enforce the order of assets."

(*f*) *Lancefield* v. *Iggulden*, L. R. 10 Ch. 140.

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New Rules 3 and 4. Extension of corresponding old rules to *personal estate*.

New Rules 3 and 4 correspond substantially with old Rules 2 and 4 respectively (*g*), except that the latter applied to *real estate* only and the former put *real estate* and *personal estate* on the same footing.

New Rules 5 to 7. No change in the law.

New Rules 5, 6 and 7 reproduce respectively old Rules 5, 6 and 7 and effect no change in the law, except that new Rule 7 includes "entailed interests" disposed of by will under the statutory power in that behalf (*h*).

A. E. Act, s. 35.

Sect. 35 of the Act reproduces, in substance, the combined effect of the Real Estate Charges Acts, 1854, 1867 and 1877, with the important modification that, whereas the repealed Acts applied only to charges on land, the new section applies to charges on "property" generally. The section is as follows:—

Charges on property of deceased to be paid primarily out of the property charged.

35.—(1) Where a person dies possessed of, or entitled to, or, under a general power of appointment (including the statutory power to dispose of entailed interests) by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified—

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or

(b) by a charge of debts upon any such estate;

unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

(*g*) Old Rule 3 as to *real estates* descended is eliminated by new Rule 1, above, p. 447.

(*h*) See L. P. Act, s. 176, above, Part III., Chapter IX., p. 188.

CHAPTER V.

DISTRIBUTION OF RESIDUARY ESTATE.

A. E. Act, Part IV., ss. 45 to 52.

PART IV. of the Act, comprising sects. 45 to 52, and effecting radical changes in the law governing the devolution of the beneficial interest in property as to which a person dies intestate and the distribution of his "residuary estate," *applies only in the case of deaths occurring after the commencement of the Act* (*a*).

Subject matter.

Definitions.

Sect. 52 of the Act enacts as follows:—

Interpretation of Part IV.

52. In this Part of this Act "real and personal estate" means every beneficial interest (including rights of entry and reverter (*b*)) of the intestate in real and personal estate which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute (*c*) to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will.

"Real and personal estate."

"Living at death."

In the Administration Act references to a child or issue living at the death of any person include a child or issue *en ventre sa mère* at such death (*d*).

A. E. Act, s. 45.

Sect. 45 of the Act is as follows:—

Abolition of descent to heir, curtesy, dower and escheat.

45.—(1) With regard to the real estate and personal inheritance of every person dying after the commencement of this Act, there shall be abolished—

(a) All existing modes rules and canons of descent, and of devolution by special occupancy or otherwise, of real estate, or of a personal inheritance, whether operating by the general law or by the custom of gavelkind or borough english or by any other custom of any county, locality, or manor, or otherwise howsoever; and

(b) Tenancy by the curtesy and every other estate and interest of a husband in real estate as to which his wife dies intestate,

(*a*) A. E. Act, s. 54, above, p. 15.
(*b*) See L. P. Act, s. 4, above, Part III., Chapter IX., pp. 195 *et seq.*
(*c*) Namely, by L. P. Act, s. 176, above, *ibid.*, p. 188.
(*d*) A. E. Act, s. 55 (2), above, p. 25.

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whether arising under the general law or by custom or otherwise; and

(c) Dower and freebench and every other estate and interest of a wife in real estate as to which her husband dies intestate, whether arising under the general law or by custom or otherwise: Provided that where a right (if any) to freebench or other like right has attached before the commencement of this Act which cannot be barred by a testamentary or other disposition made by the husband, such right shall, unless released, remain in force as an equitable interest; and

(d) Escheat to the Crown or the Duchy of Lancaster or the Duke of Cornwall or to a mesne lord for want of heirs.

(2) Nothing in this section affects the descent or devolution of an entailed interest.

Subs. (1). "Real estate."

In sub-sect. (1) "real estate" seems to be used in its strict sense and to be equivalent to "hereditament" or "hereditaments" as defined in certain of the Consolidation Acts (*e*), namely, real property which on an intestacy occurring before the commencement of those Acts might have devolved on an heir.

"Personal inheritance."

"Personal inheritance" apparently means property, such as New River shares, which, though not a "hereditament," devolved as such.

"Freebench" not barrable.

This is, no doubt, a reference to the Manor of Cheltenham, by the custom of which, contrary to the general rule, the widow's right to freebench attached on all copyholds held of that manor of which the husband was tenant at any time during the coverture, and could not be barred by a testamentary or other disposition made by him (*f*).

Subs. (2). Descent of entailed interest.

An "entailed interest" devolves in accordance with the Inheritance Act, 1833 (*g*).

A. E. Act, s. 46. "Succession to real and

Sub-sect. (1) (*h*) of sect. 46 of the Act embodies the new "Statutes of Distribution" (*i*) and prescribes in six

(*e*) See Table of Definitions, above, Part I., Chapter VII.

(*f*) See *Doe* d. *Riddell* v. *Gwinnell*, 1 Q. B. 682.

(*g*) See L. P. Act, s. 130, above, Part III., Chapter IX., p. 181; see also sect. 9 of the L. P. Act, 1924, and the Ninth Schedule to that Act, above, pp. 4 and 5.

(*h*) Sub-sect. (2) enacts, in effect, that husband and wife shall for all purposes of distribution or division under sub-sect. (1) be treated as two persons.

(*i*) See sect. 50 (1), above, p. 430.

"cases" (*k*) the manner in which "the residuary estate of the intestate" (*l*) is to be distributed or the trusts on which it is to be held.

personal . . estate on intestacy."

The following is a summary of the first five of these "cases":—

The six "Cases" of the new "Statutes of Distribution."

(i) If the intestate leaves a husband or wife (with or without issue)—

Case (i).

(1) The surviving spouse takes the "personal chattels" (*m*) absolutely:

(2) "The residuary estate" (*l*) (other than the "personal chattels") (*m*)

(α) Stands charged with the payment to the surviving spouse of a net sum of 1,000*l.* free of death duties and costs, with interest thereon at the rate of 5*l.* per cent. per annum until paid or appropriated: and, *subject to providing for that sum and the interest thereon,*

(β) Shall be held—

(a) If the intestate "leaves no issue" (*n*),
Upon trust for the surviving spouse during his or her life;

(b) If the intestate "leaves issue" (*n*),
As to one half, Upon trust for the surviving spouse during his or her life, and, *subject*

(*k*) This expression is used for convenience only, and has no statutory authority.

(*l*) As defined in sect. 33 (4), above, p. 442, and in this summary called "the residuary estate."

(*m*) See Table of Definitions, above, Part I., Chapter VII.

(*n*) Sub-sect. (2) of sect. 47 of the Act provides as follows:— "Failure of issue."

(2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest—

(a) the residuary estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve and be held under the provisions of this Part of this Act as if the intestate had died without leaving issue living at the death of the intestate;

(b) references in this Part of this Act to the intestate "leaving no issue" shall be construed as "leaving no issue who attain an absolutely vested interest";

(c) references in this Part of this Act to the intestate "leaving issue" or "leaving a child or other issue" shall be construed as "leaving issue who attain an absolutely vested interest."

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to such life interest, On the "statutory trusts" (*o*) for the issue of the intestate; and

As to the other half, On the "statutory trusts" (*o*) for the issue of the intestate, but, if those trusts fail or determine in the lifetime of the surviving spouse, then Upon trust for the surviving spouse during the residue of his or her life.

"The residuary estate" (*p*) shall be held—

Case (ii). (ii) If the intestate "leaves issue" (*q*), but no husband or wife,

On the "statutory trusts" (*o*) for the issue of the intestate.

Case (iii). (iii) If the intestate "leaves no issue" (*q*), but both parents, then, *subject to the interest of a surviving spouse*,

In trust for the father and mother in equal shares absolutely.

Case (iv). (iv) If the intestate "leaves no issue" (*q*), but one parent, then, *subject as last aforesaid*,

In trust for the surviving father or mother absolutely.

Case (v). (v) If the intestate "leaves no issue" (*q*) or parent, then, *subject as last aforesaid*,

In trust for the following persons living at the death of the intestate, and in the following order and manner, namely:—

I. On the "statutory trusts" (*o*) for the brothers and sisters of the whole blood of the intestate;

II. On the "statutory trusts" (*o*) for the brothers and sisters of the half blood of the intestate;

III. For the grandparents of the intestate, and, if more than one, in equal shares;

IV. On the "statutory trusts" (*o*) for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate);

(*o*) See sect. 47 (1) and (3), below, p. 453.
(*p*) As defined in sect. 33 (4), above, p. 442, and in this summary called "the residuary estate."
(*q*) See note (*n*), p. 451.

V. On the "statutory trusts" (*o*) for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate);

VI. For the surviving spouse absolutely.

Case (vi), as stated in the text of the Act, is as follows:— Case (vi).

(vi) In default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, as bona vacantia, and in lieu of any right to escheat.

The Crown or the said Duchy or the said Duke may (without prejudice to the powers reserved by section nine of the Civil List Act, 1910, or any other powers), out of the whole or any part of the property devolving on them respectively, provide, in accordance with the existing practice, for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision. 10 Edw. 7 and 1 Geo. 5, c. 28.

The "statutory trusts" referred to in sub-sect. (1) of sect. 46 are defined as follows in sub-sects. (1) and (3) (*p*) of sect. 47 of the Act:— A. E. Act, s. 47.

47.—(1) Where under this Part of this Act the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely:— Statutory trusts in favour of issue and other classes of relatives of intestate.

(i) In trust, in equal shares if more than one, for all or any the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one years or marry under that age of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;

(ii) The statutory power of advancement, and the statutory provisions which relate to maintenance and accumulation of surplus income, shall apply, but when an infant marries such infant shall be entitled to give valid receipts for the income of the infant's share or interest;

(*o*) See sect. 47 (1) and (3), below.
(*p*) For sub-sect. (2), see above, p. 451, note (*n*).

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(iii) Where the property held on the statutory trusts for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives;

(iv) The personal representatives may permit any infant contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representatives may consider reasonable, and without being liable to account for any consequential loss.

* * * * *

(3) Where under this Part of this Act the residuary estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trusts (other than as aforesaid) were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

Subs. (1) (ii). Power of advancement, &c.

The statutory power of advancement is conferred by sect. 32 of the Trustee Act (*q*), and the statutory provisions relating to maintenance and accumulation of surplus income are contained in sect. 31 of the same Act (*r*).

Subs. (1) (iii). Hotchpot.

The provisions of sub-sect. (1) (iii) as to bringing money or property into account are on the lines of those contained in sect. 5 of the Statute of Distribution (*s*), whereby such children as have any estate by settlement from the intestate or have been advanced by him by portion in his lifetime must bring the amount of their advancement into hotchpot.

(*q*) Above, Part V., p. 372.
(*r*) Above, *ibid.*, p. 370.
(*s*) Stat. 22 & 23 Chas. 2, c. 10.

Subs. (1) (iv). Personal chattels.

The "personal chattels" (*r*) will devolve with and as part of "the residuary estate" (*s*) only if there is no surviving spouse who takes them absolutely (*t*).

A. E. Act, s. 48. "Powers of personal representative in respect of interest of surviving spouse."

By sect. 48 of the Act the personal representative is empowered (1) with such consent, or with the leave of the Court, and on such terms, as therein mentioned, to purchase or redeem the life interest (while in possession) of a surviving spouse, whereupon "the residuary estate" (*s*) may be dealt with or distributed free from such life interest; and (2) to raise on the security of the whole or any part of "the residuary estate" (*s*) (other than the "personal chattels" (*r*)) (a) the net sum of 1,000*l.* or any part thereof and the interest thereon payable to the surviving spouse, so far as that estate may be sufficient for the purpose, or the said sum and interest may not have been satisfied by an appropriation under the statutory power in that behalf (*u*); and (b) the capital sum, if any, required for the purchase or redemption of the life interest of the surviving spouse, or any part thereof not satisfied by the application for that purpose of any part of "the residuary estate" (*s*), and in either case the amount, if any, properly required for the payment of the costs of the transaction.

A. E. Act, s. 49. Application to cases of partial intestacy.

Sect. 49 of the Act is as follows:—

49. Where any person dies leaving a will effectively disposing of part of his property, this Part of this Act shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the will and subject to the following modifications:—

(a) The requirements as to bringing property into account (*v*) shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons:

(b) The personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Part of this Act in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take such part beneficially.

(*r*) See Table of Definitions, above, Part I., Chapter VII.

(*s*) As defined in sect. 33 (4), above, p. 442, and in the summary called "the residuary estate."

(*t*) See summary of Case (i), above, p. 451. As to the power of the Court to direct a division of chattels, see L. P. Act, s. 188, above, Part III., Chapter XV., p. 245. Division of chattels.

(*u*) See A. E. Act, s. 41, below, Part IX., Section VII.

(*v*) See A. E. Act, s. 47 (1) (iii), above, p. 454.

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Para. (b). Comparison with s. 2 (1) of the L. T. Act, 1897.

The language of paragraph (b), apart from the concluding words, "unless," &c., is not unlike that of sect. 2 (1) of the Land Transfer Act, 1897, which provides that subject to the powers, rights, duties and liabilities thereinafter mentioned, the personal representatives of a deceased person shall hold the real estate *as trustees for the persons by law beneficially entitled thereto* (*w*).

Effect of para. (b).

It is thought that paragraph (b) must be read in conjunction (*x*) with sect. 33 (*y*) of the Act and with Part II. of the First Schedule (*z*) to the Act; with the result that *the part of the estate not expressly disposed of*, that is, the property as to which the deceased dies intestate, will become subject to the statutory trust for sale and conversion created by sect. 33 (*y*), and the same property or the proceeds of the sale and conversion thereof will be the primary fund for the payment of the debts of the deceased and, subject to such payment, will be "the residuary estate of the intestate" and be held in trust for the persons entitled thereto under Part IV. of the Act.

"Unless it appears," &c.

The concluding words of paragraph (b), "unless it appears," &c., re-enact the effect of the Executors Act, 1830.

A. E. Act, s. 51. "Savings." Subs. (1). Heir by purchase.

Sect. 51 of the Act, by sub-sect. (1), "saves" the right of any person to take beneficially, by purchase, as heir either general or special (*a*).

Subs. (2). Lunatic or defective.

Sub-sects. (2), (3) and (4) of this section are as follows:—

(2) The foregoing provisions of this Part of this Act do not apply to any beneficial interest in real estate (not including chattels real) to which a lunatic (*b*) or defective (*b*) living and of full age at the commencement of this Act, and unable, by reason of his incapacity, to make a will, who thereafter dies intestate in respect of such interest without having recovered his testamentary capacity, was entitled at his death, and any such beneficial interest (not being an interest ceasing on his death) shall, without prejudice to any will of the deceased,

(*w*) Under this enactment, and, probably, also under paragraph (2), a personal representative is an "express trustee" within the meaning of sect. 25 (2) of the Judicature Act, 1873. See *Toates* v. *Toates*, (1926) W. N. 111.

(*x*) See *Ebbs* v. *Boulnois*, L. R. 10 Ch. at p. 484.

(*y*) Above, p. 441.

(*z*) Above, p. 445.

(*a*) See L. P. Act, s. 132, above, Part III., Chapter IX., p. 187.

(*b*) See Table of Definitions, above, Part I., Chapter VII.

devolve in accordance with the general law in force before the commencement of this Act applicable to freehold land, and that law shall, notwithstanding any repeal, apply to the case.

For the purposes of this subsection, a lunatic or defective who dies intestate as respects any beneficial interest in real estate shall not be deemed to have recovered his testamentary capacity unless his committee or receiver has been discharged.

Subs. (3). Infant.

(3) Where an infant dies after the commencement of this Act without having been married, and independently of this subsection he would, at his death, have been equitably entitled under a settlement (including a will) to a vested estate in fee simple or absolute interest in freehold land, or in any property settled to devolve therewith or as freehold land, such infant shall be deemed to have had an entailed interest (*b*), and the settlement shall be construed accordingly.

Subs. (4). Entailed interest.

(4) This Part of this Act does not affect the devolution of an entailed interest (*b*) as an equitable interest.

(*b*) See Table of Definitions, above, Part I., Chapter VII.

CHAPTER VI.

SUPPLEMENTAL.

A. E. Act, Part V., ss. 53 to 58.

Subject matter.

PART V. of the Act, containing "supplemental" provisions, comprises sects. 53 to 58, of which the following only has not been already referred to (*a*):—

Application to Crown.

57.—(1) The provisions of this Act bind the Crown and the Duchy of Lancaster, and the Duke of Cornwall for the time being, as respects the estates of persons dying after the commencement of this Act, but not so as to affect the time within which proceedings for the recovery of real or personal estate vesting in or devolving on His Majesty in right of His Crown, or His Duchy of Lancaster, or on the Duke of Cornwall, may be instituted.

(2) Nothing in this Act in any manner affects or alters the descent or devolution of any property for the time being vested in His Majesty either in right of the Crown or of the Duchy of Lancaster or of any property for the time being belonging to the Duchy of Cornwall.

(*a*) See for sect. 53 ("General savings"), above, p. 445, note (*v*); for sect. 54 ("Application of Act"), above, Part I., p. 15; for sect. 55 ("Definitions"), above, Part I., Chapter VII.; for sect. 56 ("Repeal"), above, Part I., p. 16; and for sect. 58 ("Short title, commencement and extent"), above, Part I., pp. 7 and 8.

PART VIII.

The Registration Act.

CHAPTER I.

PRELIMINARY.

Repeals. Acts.

The Land Transfer Acts, 1875 and 1897 (in this Part collectively referred to as "the repealed Acts," and individually as "the Act of 1875" and "the Act of 1897"), are repealed (*a*) and replaced by the Registration Act (in this Part usually referred to as "the Act" or "the new Act").

Rules.

The Land Transfer Rules, 1903 (as amended by the Land Transfer Rules, 1907, and the Land Transfer Rules, 1908), and the Land Registry (Small Holdings) Rules, 1892, except so far as they relate to the remuneration of solicitors in or incidental to or consequential on the registration of land and transactions in the registry (*b*), are rescinded and replaced by the Land Registration Rules, 1925 (*c*) (in this Part referred to as "the Rules" or "the new Rules"), which were made in exercise of the powers conferred by sect. 144 of the new Act, and came into operation on the 1st January, 1926 (*c*).

Re-enactments.

A considerable number of the repealed enactments and some of the rescinded Rules are re-enacted, with or without amendment, by the new Act, as appears by the following table:—

(*a*) L. R. Act, s. 147, and Schedule, except Part I., not relating to registration, of the L. T. Act, 1897.

(*b*) The excepted rule is Rule 336 of the L. T. Rules, 1903, as amended by Part VII. of the L. T. Rules, 1908.

(*c*) S. R. & O. 1925, No. 1093/L. 28, dated November 3rd, 1903. See Rules 324 and 325. See also the Land Registration Fee Order, 1925, S. R. & O. 1925, No. 1122/L. 32, which came into operation on the same date. The new Rules have the same force as if enacted in the Act: see sect. 144 (2).

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Repealed enactment (*d*).	Substituted enactment in L. R. Act.	Marginal note to substituted enactment.
1875, s. 1	Not re-enacted.	
s. 2 ..... 1897, 1st Sched. } (*e*)	Not re-enacted.	
1875, s. 4	Sect. 3	Interpretation (*f*).
s. 5 ..... s. 6 ..... 1908, r. 39	Sect. 4	Application for registration of freehold land.
1875, s. 7	Sect. 5	Effect of first registration with absolute title.
s. 8	Sect. 6	Effect of first registration with possessory title.
s. 9	Sect. 7	Qualified title.
s. 10 ..... 1897, s. 8 (5) .... 1903, r. 65	Sect. 63	Issue of land and charge certificates.
1875, s. 11 ..... 1897, 1st Sched.. 1903, rr. 52, 67 .. 1908, rr. 39, 53 ..	Sect. 8 (1) (2)	Application for registration of leasehold land.
1875, s. 13 ..... 1903, r. 55	Sect. 9	Effect of first registration with absolute title.
r. 56	Sect. 10 (*g*)	Effect of first registration with good leasehold title.
r. 57	Sect. 11	Effect of first registration with possessory title.
r. 58 ..... 1908, III. ..... 1903, r. 59	Sect. 12	Qualified title.
1875, s. 17	Sect. 13	Regulations as to examination of title by registrar.
s. 18 ..... 1897, 1st Sched..	Sect. 70	Liability of registered land to overriding interests.
1875, s. 19 ..... 1897, 1st Sched. . 1875, s. 20	Sect. 46	Determination or variation of leases, incumbrances, &c.

(*d*) In this column only sections and rules which were in force at the commencement of the L. R. Act are included. The Acts and Rules mentioned in this column are distinguished by the years in which they were passed or made respectively; thus, "1875" means the L. T. Act, 1875; "1903" means the L. T. Rules, 1903.

(*e*) See L. R. Act, s. 1.

(*f*) See above, Part I., Chapter VII.

(*g*) See Rule 44.

Repealed enactment (*d*).	Substituted enactment in L. R. Act.	Marginal note to substituted enactment.
1875, s. 22 ..... 1897, s. 9 (3) (4) ..	Sect. 25 (1) (3)	Proprietor's power to create charges.
1875, s. 22 ..... 1897, 1st Sched...	Sect. 26 (1) (3)	Registration of charges.
1875, s. 22 ..... 1897, s. 8 (5)	Sect. 63	Issue of land and charge certificates.
1875, s. 23 ..... s. 24	Sect. 28	Implied covenants in charges.
s. 25 ..... s. 26 ..... s. 27 ..... 1897, s. 9 (1)(2)..	Sect. 34	Powers of proprietor of charge.
1875, s. 28	Sect. 29	Priorities of registered charges.
s. 28 ..... 1897, 1st Sched...	Sect. 35 (1)	Discharge of charges.
1875, s. 29	Sect. 18 (1)	Powers of disposition of registered freeholds.
s. 29	Sect. 19 (1)	Registration of dispositions of freeholds.
s. 29 ..... 1897, s. 8 (1) (4) ..	Sect. 64	Certificates to be produced and noted on dealings.
1875, ss. 30—33 .. 1897, 1st Sched...	Sect. 20	Effect of registration of dispositions of freeholds.
1875, s. 34 ..... 1903, r. 67	Sect. 21 (1)	Powers of disposition of registered leaseholds.
1875, s. 34	Sect. 22	Registration of dispositions of leaseholds.
s. 34 ..... s. 29 ..... 1907, s. 8 (1) (4) .. 1903, r. 143	Sect. 64	Certificates to be produced and noted on dealings.
1875, s. 35 ..... 1897, 1st Sched. . 1903, rr. 67, 140—142 1875, s. 38 ..... 1897, 1st Sched...	Sect. 23 (*e*)	Effect of registration of dispositions of leaseholds.
1875, s. 39	Sect. 24	Implied covenants on transfers of leaseholds.
s. 40 ..... 1897, 1st Sched ..	Sect. 33 (1) (2) (3) ..	Transfer of charges.
1875, s. 40	Sect. 64 (3)	Certificates to be produced and noted on dealings.

(*d*) See note (*d*) on p. 460.
(*e*) See Rule 44.

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Repealed enactment (*d*).	Substituted enactment in L. R. Act.	Marginal note to substituted enactment.
1875, ss. 41, 42	Sect. 41 (1)	Transmissions of land and charges on death of proprietor.
s. 43 ..... 1897, 1st Sched. ..	Sect. 42 (1)	Transmissions on bankruptcy of proprietor.
1875, ss. 44, 45 .. 1897, 1st Sched. ..	Not re-enacted.	
1875, s. 46	Sect. 43	Effect of transmissions.
s. 47	Sect. 45	Proof of transmission of registered proprietorship.
s. 49 ..... 1897, 1st Sched. ..	Sect. 101 (1) (2) (3)	Dispositions off the register creating "minor interests."
	Sect. 105	As to minor interests in mortgage debts.
1875, s. 50 ..... 1897, 1st Sched. .. 1875, s. 51	Sect. 48	Registration of notice of lease.
s. 52	Sect. 49 (1) (e)	Rules to provide for notices of other rights, interests and claims.
s. 53	Sect. 54	Cautions against dealings.
ss. 54, 55 ...	Sect. 55	Effect of cautions against dealings.
s. 56	Sect. 56 (1) (3)	General provisions as to cautions.
s. 57	Sect. 57 (1) (2) (3) ..	Power of Court or registrar to inhibit registered dealings.
s. 58 ..... 1897, 1st Sched. .. 1875, s. 59	Sect. 58	Power to place restrictions on register.
ss. 60, 61, 62	Sect. 53	Cautions against first registration.
s. 63	Sect. 56 (3)	General provisions as to cautions.
s. 64	(2).	
s. 65	Sect. 96	Crown and Duchy land.
s. 66 ..... 1897, 1st Sched. ..	Sect. 97	Foreshore.
1875, s. 67	Not re-enacted.	
s. 68	Cf. Sect. 94	Land held on trust for sale.
s. 69	Not re-enacted.	
s. 70	Sect. 14 (1) (2)	Evidence required before registration.

(*d*) See note (*d*) on p. 460.

Repealed enactment (*d*).	Substituted enactment in L. R. Act.	Marginal note to substituted enactment.
1875, s. 71	Sect. 15	Production of deeds.
s. 72 ... 1897, 1st Sched.	Sect. 16	Deeds to be marked with notice of registration.
1875, s. 73	Sect. 17	Costs of application for registration.
ss. 74, 75	Sect. 140	Power of registrar to state case for the Court.
s. 76	Sect. 141	Intervention of Court in case of persons under disability.
s. 77	Sect. 142	Power of Court to bind interests of persons under disability.
s. 79 ... 1903, rr. 65, 143	Sect. 67 (1)	Issue of new certificates.
1875, s. 80 ... 1903, rr. 65, 143	Sect. 68	Certificates to be evidence.
1875, s. 82	Not re-enacted (*h*).	
s. 83 (1) ... 1897, 1st Sched.	Sect. 74	Notice of trust not to affect registered dealing.
1875, s. 83 (3) ... 1897, 1st Sched.	Sect. 58 (3)	Power to place restrictions on register.
1875, s. 83 (4)	Not re-enacted.	
(7)	Sect. 14 (3)	Evidence required before registration.
(8)	Not re-enacted.	
s. 84 ... 1897, 1st Sched.	Sect. 40 (1)	Creation and discharge of restrictive covenants.
1875, s. 85	Sect. 111 (6)	[Trustee Act, 1925, &c. to apply.]
s. 86	Sect. 131	Indemnity to officers of registry.
s. 87	Not re-enacted.	
s. 88	Sect. 111 (4) (5)	Infants, defectives and lunatics.
ss. 89 to 92	Sect. 79	Addresses for service and notices.
ss. 93, 94	Sect. 139	Powers of Court in action for specific performance.
ss. 95 to 97	Sect. 82 (1) (a) (b) (5)	Rectification of the register.
s. 98	Sect. 114	Fraudulent dispositions, how far to be void.

(*d*) See note (*d*) on p. 460.
(*h*) See Rules 50 to 55.

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Repealed enactment (*d*).	Substituted enactment in L. R. Act.	Marginal note to substituted enactment.
1875, s. 99	Sect. 115	Penalty for suppression of deeds and evidence.
	Sect. 117	Punishment for misdemeanours.
s. 100	Sect. 116	Penalty for certain fraudulent acts.
	Sect. 117	Punishment for misdemeanours.
s. 101	Not re-enacted.	
ss. 102, 103 ..	Sect. 119	Civil remedies and discovery.
s. 104	Sect. 112	Inspection of register and other documents at land registry.
s. 105	Sect. 80	*Bona vacantia* and forfeiture.
s. 106 ..... 1897, s. 22 (1) ... L. R. Act, 1886 .. 1875, s. 107	Sect. 126	His Majesty's Land Registry.
s. 108	Sect. 127	Conduct of business by registrar.
ss. 109, 110..	Sect. 128	Power for registrar to summon witnesses.
s. 111 ..... 1897, s. 22 (2) (6)	Sect. 144	Power to make general rules.
1875, s. 112 ..... 1897, s. 22 (3) (4)	Sect. 145	Power to make Fee Orders and principles on which fees determined.
1875, ss. 114, 115 ..	Sect. 138 (1) (3) (5) ..	Jurisdiction of High Court and County Courts.
ss. 116, 117.	Sect. 143	Appeals.
ss. 118—120 1897, s. 22 (8) ...	Sect. 132	Power to form district registries by general orders.
1875, s. 121	Sect. 133	Powers of district registrar, and appeals from him.
s. 122	Sect. 134	Application of general orders, &c. to districts.
s. 123, first three paras., s. 124.....	Not re-enacted.	
s. 123, fourth para., ss. 125, 126.	Sect. 137	Provisions as to the Land Registry Act, 1862.
s. 127 ..... 1897, 1st Sched. ..	Sect. 135	Exemption of land registered under Act from registry of deeds.

(*d*) See note (*d*) on p. 460.

Repealed enactment (*d*).	Substituted enactment in L. R. Act.	Marginal note to substituted enactment.
1875, s. 128	Not re-enacted.	
1897, s. 6, (1) (10).	Sect. 86 (1)	Registration of settled land.
(2)	(3)	
(3)	(4)	
(8)	Not re-enacted.	
(4) (5) ..	Sect. 87 (1)	Changes of ownership of settled land.
(6)	Sect. 88 (1)	Settlement may be filed in registry.
(7)	Sect. 90	Charges for money actually raised.
(9)	Sect. 93	As to persons in a fiduciary position.
s. 7	Sect. 83	Right to indemnity in certain cases.
s. 8 (1) .... 1903, r. 65 ..... 1897, s. 8 (4)	Sect. 64 (1) (2) (4) ..	Certificates to be produced and noted on dealings.
(2)	Sect. 110 (6)	Provisions as between vendor and purchaser.
(3) .... 1903, r. 65	Sect. 67 (2)	Issue of new certificates.
1897, s. 8 (4)	Sect. 65	Deposit at registry of certificate of mortgaged land.
(6) .... 1903, r. 251	Sect. 66	Creation of liens by deposit of certificates.
1897, s. 9 (1) (2) ..	Sect. 34	Powers of proprietor of charge.
(5) ..	Sect. 31 (1) (3)	Alteration of charges.
(6) ..	Sect. 37 (1) (2)	Powers of persons entitled to be registered.
s. 10 (*k*)	Sect. 118	Penalty for unqualified persons drawing instruments.
s. 12	Cf. sect. 75	Acquisition of title by possession.
s. 13	Not re-enacted (*l*).	
s. 14 (1)	Not re-enacted.	
(2)	Sect. 76	Description of registered land.
s. 15	Sect. 99	Land belonging to benefices.

(*d*) See note (*d*) on p. 460.
(*k*) Sect. 11 repealed sect. 2 of 32 Hen. 8, c. 9.
(*l*) See L. R. Act, s. 73 (16).

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Repealed enactment (*d*).	Substituted enactment in L. R. Act.	Marginal note to substituted enactment.
1897, s. 16 (1) (2) ..	Sect. 110 (1) to (5) ..	Provisions as between vendor and purchaser.
(3)	Not re-enacted (*m*).	
s. 17	Sect. 81	Power to remove land from the register.
s. 18	Not re-enacted.	
s. 19	Sect. 100 (1) (2)	Small holdings.
s. 20 (1) ... s. 24 (1) ... 1903, r. 68	Sect. 120 (1)	Power to make orders rendering registration compulsory in certain areas.
1897, s. 20 (4)	(6)	
(10)	(3)	
(11)	(7)	
(12)	(4) (5)	
(3) (6) ..	Not re-enacted.	
(8) (9)..	Sect. 121	Provisions as to orders made at the instance of a County Council.
(5)	Sect. 122 (i).....	Provisions as to Orders made otherwise than at the instance of a County Council.
(7)	(xii)	
(1) ... 1903, r. 69	Sect. 123 (1)	Effect of Act in areas where registration is compulsory.
1897, s. 20 (2) .. 1903, r. 70 ..... 1908, IV.	(3)	
1897, s. 21	Sect. 85	Insurance fund for providing indemnity.
s. 22 (5) (7) ..	Not re-enacted.	
s. 23	Sect. 136	Power to transfer Yorkshire registries to land registry.
ss. 24 (2) 25, 26	Not re-enacted.	

(*d*) See note (*d*) on p. 460.
(*m*) See L. R. Act, s. 38 (2), and Rules 76, 77.

CHAPTER II.

WHAT ESTATES MAY BE REGISTERED (*a*).

SECT. 2 of the Registration Act provides as follows:— L. R. Act, s. 2.

2.—(1) After the commencement of this Act, estates capable of subsisting as legal estates (*b*) shall be the only interests in land in respect of which a proprietor can be registered and all other interests in registered land (except overriding interests and interests entered on the register at or before such commencement) shall take effect in equity as minor interests, but all interests (except undivided shares in land) entered on the register at such commencement which are not legal estates shall be capable of being dealt with under this Act: What estates may be registered.

Provided that, on the occasion of the first dealing with any such interest, the register shall be rectified in such manner as may be provided by rules (*c*) made to secure that the entries therein shall be similar to those which would have been made if the title to the land had been registered after the commencement of this Act.

(2) Subject as aforesaid, and save as otherwise expressly provided by this Act, this Act applies to land registered under any enactment replaced by this Act in like manner as it applies to land registered under this Act. Application of Act.

References in the new Act to "overriding interests" (*d*) take the place of references in the repealed Acts to "liabilities, rights and interests which are declared not to be incumbrances" (*e*). Subs. (1). "Overriding interests."

The enumeration in sect. 70 of the new Act of what constitute overriding interests is, to a large extent, identical with the Enumeration of "overriding interests."

(*a*) Part I. of the L. R. Act is headed "Preliminary" and comprises sects. 1 to 3, whereof sect. 1 provides that there shall continue to be kept at His Majesty's Land Registry a register of title to freehold land and leasehold land; sect. 2 is set out above; and sect. 3 is the "Interpretation" clause, as to which see above, Part I., Chapter VII.

(*b*) See above, Part III., Chapter I.

(*c*) See L. R. Rules, 211.

(*d*) See Table of Definitions, above, Part I., Chapter VII.

(*e*) Namely, by sect. 18 of the L. T. Act, 1875, as amended by the First Schedule to the L. T. Act, 1897, and, as so amended, set out in n. (*o*) on pp. 1113 and 1114 of the Treatise.

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enumeration of what in the repealed Acts constitute liabilities, rights and interests which are not to be deemed incumbrances within the meaning of those Acts.

L. R. Act, s. 70.

Sect. 70 of the new Act is as follows:—

Liability of registered land to overriding interests. [L. T. Act, 1875, s. 18; L. T. Act, 1897, 1st sched.]

70.—(1) [All registered land shall, unless under the provisions of this Act the contrary is expressed on the register, be deemed to be subject to such of the following] overriding interests [as may be for the time being subsisting in reference thereto, and such interests shall not be treated as incumbrances within the meaning of this Act, (that is to say):—]

(a) [Rights of common, drainage rights, customary rights] (until extinguished), [public rights, profits *à prendre*, rights of sheepwalk, rights of way, watercourses, rights of water, and other easements] not being equitable easements required to be protected by notice on the register;

(b) [Liability to repair highways by reason of tenure, quit-rents, crown rents, heriots, and other rents and charges] (until extinguished) [having their origin in tenure;]

(c) [Liability to repair the chancel of any church;]

(d) [Liability in respect of embankments, and] sea and [river walls;]

(e) [Land tax, tithe rentcharge, payments in lieu of tithe,] and charges or annuities payable for the redemption of tithe rentcharges;

(f) [Subject to the provisions of this Act, rights acquired or in course of being acquired under the Limitation Acts;]

(g) The rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, save where enquiry is made of such person and the rights are not disclosed;

(h) In the case of a possessory, qualified, or good leasehold title, all estates, rights, interests, and powers excepted from the effect of registration;

(i) Rights under local land charges unless and until registered or protected on the register in the prescribed manner;

(j) [Rights of fishing and sporting, seignorial and manorial rights of all descriptions] (until extinguished), [and franchises;]

(k) [Leases for any term or interest not exceeding twenty-one years,] granted at a rent without taking a fine;

(l) [In respect of land registered before the commencement of this Act, rights to mines and minerals, and rights of entry, search, and user, and other rights and reservations incidental to or required for the purpose of giving full effect to the enjoyment of rights to mines and minerals or of property in mines or minerals, being rights which, where the title was first registered before the first day of January, eighteen hundred and

ninety-eight, were created before that date, and where the title was first registered after the thirty-first day of December, eighteen hundred and ninety-seven, were created before the date of first registration:]

[Provided that, where it is proved to the satisfaction of the registrar that any land registered or about to be registered is exempt from land tax, or tithe rentcharge or payments in lieu of tithe,] or from charges or annuities payable for the redemption of tithe rentcharge, [the registrar may notify the fact on the register in the prescribed (*f*) manner.] [L. T. Act, 1875, s. 18.]

(2) Where at the time of first registration any easement, right, privilege, or benefit created by an instrument and appearing on the title adversely affects the land, the registrar shall enter a note thereof on the register (*g*).

(3) [Where the existence of any overriding interest mentioned in this section is proved to the satisfaction of the registrar] or admitted, [he may] (subject to any prescribed exceptions) [enter notice of the same] or of a claim thereto [on the register,] but no claim to an easement, right, or privilege not created by an instrument shall be noted against the title to the servient land if the proprietor of such land (after the prescribed notice is given to him) shows sufficient cause to the contrary. [*Ib.*]

The words "until extinguished" in paragraphs (a), (b) and (j) of sub-sect. (1) of sect. 70 refer to the extinguishment of manorial incidents under the Property Acts, 1922 and 1924 (*h*). L. R. Act, s. 70, subs. (1), paras. (a) (b) (j). "Until extinguished."

An "equitable easement" is a land charge within the meaning of the Land Charges Act (*i*), as is also a "local land charge" (*k*). *Ib.*, paras. (a) (i). Land Charges.

Sect. 75 of the Act provides that the "Limitation Acts" (*l*) shall apply to registered land in the same manner and to the same extent as those Acts apply to land not registered, except that where, if the land were not registered, the estate of the person registered as proprietor would be extinguished, it shall not be extinguished but shall be deemed to be held by the proprietor for the time being in trust for the person who, by virtue of the said Acts, has acquired title against any pro- *Ib.*, para. (f). Limitation Acts. L. R. Act, s. 75.

(*f*) See L. R. Rules, 194.

(*g*) *Ib.*, 41.

(*h*) Above, Part II., Chapter III.

(*i*) Above, Part VI., Chapter VI., p. 414.

(*k*) *Ib.*, Chapter VII., p. 418. As to the protection of land charges on the register, see below, Chapter V.

(*l*) See Table of Definitions, above, Part I., Chapter VII.

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prietor (*m*); and the same section contains provisions for the registration (*n*) of any person claiming to have acquired a title under the Limitation Acts, and for the compensation (*o*) of any purchaser or person deriving title under him whose title, being registered or protected on the register, is prejudicially affected by an entry under this section; and, by sub-sect. (5), rules may be made for applying the provisions of this section to cases where an easement, right or privilege has been acquired by prescription.

L. R. Act, s. 70, subs. (3).

Entry of notice of overriding interests.

L. R. Rules, 197.

Rule 197 contains provisions for the making in the register of an entry of the freedom from or the existence of an overriding interest. Any entry of the existence of the interest is to be made against the title in the Charges Register and, so far as practicable, by reference to the instrument creating the right or by setting out an extract therefrom. Any entry, showing that the registered land is free from any one or more of the overriding interests mentioned in sect. 70 of the Act, is to be made in the Property Register (*p*).

L. R. Rules, 250.

Acquisition of adverse easements by prescription.

Rule 250 provides as follows:—

250.—(1) Pursuant to subsection (5) of section 75 of the Act, it is hereby provided that easements, rights and privileges adversely affecting registered land may be acquired in equity by prescription in the same manner and to the same extent as if the land were not registered.

(2) If any easement, right, or privilege so acquired is of such estate and nature as is capable of taking effect at law it shall take effect at law also, and in that case—

(a) if it is an overriding interest, notice of it may be entered on the register if the registrar thinks fit under subsection (3) of section 70 of the Act.

(b) if it has been acquired for the benefit of registered land, it may, if the registrar thinks fit, be registered as part of the description of the land.

Ib., 198.

Notice to proprietor of servient tenement as to easement, &c.

Rule 198 provides as follows:—

198. The notice required to be served on the proprietor of the servient tenement, before an entry can be made against it, of the

(*m*) L. R. Act, s. 75 (1).
(*n*) *Ib.*, sub-ss. (2) and (3).
(*o*) *Ib.*, sub-s. (4).
(*p*) As to the Register, see L. R. Rules, Part I., 2 to 18.

existence of an easement, right, or privilege, not created by an instrument, shall be fourteen days or such longer period as the registrar may deem advisable.

Death duties.

The "liabilities, rights and interests" specified in sect. 18 of the Act of 1875, as amended by the First Schedule to the Act of 1897 (*q*), included succession duty and estate duty; but special provisions as to "death duties" (*r*) are contained in sect. 73 of the Registration Act.

L. R. Act, s. 73.

Sub-sects. (1), (2), (7), (8), (9), (15) and (16) of that section (*s*) are as follows:—

Provisions as to death duties.

73.—(1) A registered disposition in favour of a purchaser shall operate to vest in him the estate or interest transferred or created by the disposition free from all claims of His Majesty for death duties, notwithstanding that notice of a claim for duties may be noted on the register under this section.

(2) A disposition to any person, other than a purchaser, shall take effect subject to any charge for payment of death duties and the interest thereon, whether notice of a claim for the duties is entered on the register or not.

. . . . . .

(7) Where on the death of a proprietor it appears to the registrar that a charge for death duties has arisen, the registrar shall enter notice of the charge on the register in the prescribed manner (*t*).

(8) When any such notice is entered, the registrar shall, before registering or entering notice of any disposition which would operate to override the charge for duties, give notice of the intended registration or entry to the said Commissioners (*u*), and cancel the notice of the claim for duties so far as it relates to the land or interest therein comprised in the disposition.

(9) When all claims for duties have been satisfied, or no such claims arise, or the said Commissioners are satisfied that the duties will be paid or commuted, they shall notify the fact to the registrar, who shall thereupon cancel the notice, if any, of the claim (*v*).

. . . . . .

(15) In this section "purchaser" includes only a purchaser for money or money's worth.

(16) This section only applies to death duties which become payable or leviable after the commencement of this Act.

(*q*) See n. (*o*) on pp. 1113, 1114 of the Treatise.
(*r*) See Table of Definitions, above, Part I., Chapter VII.
(*s*) For the rest of the section, see below, Part IX., Section XXI.
(*t*) See L. R. Rules, 191.
(*u*) That is, the Commissioners of Inland Revenue.
(*v*) See L. R. Rules, 192, 193.

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60 & 61 Vict. c. 65.

With respect to death duties which become payable or leviable before that date section thirteen of the Land Transfer Act, 1897, and all the other provisions of the Land Transfer Acts, 1875 and 1897, relating to death duties shall, notwithstanding any repeal, continue to apply.

L. R. Act, s. 2 (1). Minor interests.

In the Registration Act the expression "minor interests" takes the place, for some purposes, of the expression "unregistered estates, rights, interests or equities" in the Act of 1875 (*w*).

Definition.

From the definition of "minor interests" (*x*) it will be seen that they *mean*—

> The interests not capable of being disposed of or created by registered dispositions and capable of being overridden (whether or not a purchaser has notice thereof) by the proprietors *unless protected as provided by the Act*, and
>
> All rights and interests *which are not registered or protected on the register*, and are not overriding interests, and *include*—
>
> (a) in the case of land held on trust for sale, all interests and powers which are under the Property Act (*y*) capable of being overridden by the trustees for sale, *whether or not such interests and powers are so protected;* and
>
> (b) in the case of settled land, all interests and powers which are under the Settled Land Act (*z*), and the Property Act (*a*), or either of them, capable of being overridden by the tenant for life or statutory owner, *whether or not such interests and powers are so protected as aforesaid.*

Undivided shares.

An undivided share in land is not "land" within the meaning of the Consolidation Acts (*b*), and a legal estate is not capable of subsisting or of being created in an undivided share in land (*c*); and an undivided share in land can only take effect

(*w*) See, *e.g.*, sects. 7 and 13 of the L. T. Act, 1875, as compared with sects. 5 and 9 of the L. R. Act.
(*x*) Above, Part I., Chapter VII., p. 39.
(*y*) See L. P. Act, s. 2 (1) (ii), (2), (3), above, pp. 203-4; s. 27, above, p. 170.
(*z*) See S. L. Act, s. 72, above, p. 326.
(*a*) See L. P. Act, s. 2 (1) (i), above, p. 203.
(*b*) See Table of Definitions, above, Part I., Chapter VII.
(*c*) L. P. Act, s. 1 (6), above, p. 98.

behind a trust for sale (*d*). Accordingly the Registration Act contains provisions for registering as proprietors of the entirety of any land, an undivided share in which was registered at the commencement of the Act, the persons in whom the legal estate in such entirety vested by virtue of the Property Act (*e*), and for removing from the register the title to the undivided share (*f*); and after the commencement of the Act no entry other than a caution against dealings with the entirety of the land may be made in the register as respects the title to an undivided share in land (*g*).

(*d*) S. L. Act, s. 36 (4), above, p. 160.
(*e*) Above, Part III., Chap. V.
(*f*) See L. R. Act, ss. 78, 81.
(*g*) L. R. Act, s. 78 (4).

CHAPTER III.

REGISTRATION OF LAND (*a*).

Section 1.—*Who may apply to be Registered.*

Changes in the law.

THE persons entitled under the new Act to apply to be registered as proprietors of freehold land and leasehold land respectively are not the same as those so entitled under the repealed Acts, as will be seen on comparing sects. 4 and 8 of the new Act with the corresponding sections of the repealed Acts.

Under the new Act a person entitled to apply must be either the holder of the legal estate which it is sought to register, or (with some exceptions) a person entitled to require such legal estate to be vested in him, and, in either case, whether subject or not to incumbrances.

Under the Act of 1875 a person who had contracted to buy an estate capable of registration could, with the consent of the vendor, apply to be registered as proprietor of such estate. In the new Act such a purchaser is expressly excluded.

L. R. Act, s. 4.

Application for registration of freehold land.

[Compare L. T. Act, 1875, s. 5.]

Sect. 4 of the Act provides as follows:—

4. Where the title to be registered is a title to a freehold estate in land—

(a) [any] estate owner [holding an estate in fee simple] (including a tenant for life, statutory owner, personal representative, or trustee for sale) [whether subject or not to incumbrances;] or

(b) any other person (not being a mortgagee where there is a subsisting right of redemption or a person who has merely contracted to buy land) who is entitled to require a legal estate

(*a*) This is the subject of Part II. of the Act, comprising sects. 4 to 17, whereof sects. 4 to 7 relate to "Freehold Land," sects. 8 to 12 to "Leasehold Land," and sects. 13 to 17 to "Preliminaries to Registration."

in fee simple whether subject or not to incumbrances, to be vested in him;

[may apply to the registrar to be registered in respect of such estate, or,] in the case of a person not in a fiduciary position, [to have registered in his stead any nominee, as proprietor with an absolute title or with a possessory title:]

Provided that—

(i) [Where an absolute title is required the applicant or his nominee shall not be registered as proprietor until and unless the title is approved by the registrar;] [L. T. Act, 1875, s. 6.]

(ii) [Where a possessory title is required the applicant or his nominee may be registered as proprietor on giving such evidence of title and serving such notices, if any, as may for the time being be prescribed (*b*);] [*Ib.*]

(iii) [If, on an application for registration with possessory title, the registrar is satisfied as to the title to the freehold estate, he may register it as absolute,] whether the applicant consents to such registration or not, but in that case no higher fee shall be charged than would have been charged for registration with possessory title. [L. T. Rules, 1908, r. 39.]

Sect. 8 of the Act is as follows:— L. R. Act, s. 8.

8.—(1) Where the title to be registered is a title to a leasehold interest in land— Application for registration of leasehold land.

(a) [any] estate owner (including a tenant for life, statutory owner, personal representative, or trustee for sale, but not including a mortgagee where there is a subsisting right of redemption), [holding under a lease for a term of years] absolute [of which more than twenty-one are unexpired, whether subject or not to incumbrances,] or [Compare L. T. Act, 1875, s. 11.]

(b) any other person (not being a mortgagee as aforesaid and not being a person who has merely contracted to buy the leasehold interest) who is entitled to require a legal leasehold estate held under such a lease as aforesaid (whether subject or not to incumbrances) to be vested in him,

[may apply to the registrar to be registered in respect of such estate, or] in the case of a person not being in a fiduciary position [to have registered in his stead any nominee, as proprietor] [with an absolute title, with a good leasehold title or with a possessory title:] [L. T. Rules, 1903, r. 52.]

Provided that—

(i) [Where an absolute title is required, the applicant or his nominee shall not be registered as proprietor until and unless the title both to the leasehold and to the freehold, and to any intermediate leasehold that may exist, is approved by the registrar;] [L. T. Rules, 1908, r. 53.]

(*b*) See L. R. Rules, 38.

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[L. T. Rules, 1908, r. 53.]

(ii) [Where a good leasehold title is required, the applicant or his nominee shall not be registered as proprietor until and unless the title to the leasehold interest is approved by the registrar;]

(iii) Where a possessory title is required, the applicant or his nominee may be registered as proprietor on giving such evidence of title and serving such notices, if any, as may for the time being be prescribed (*b*);

[*Ib.* rr. 38, 53.]

(iv) [If on an application for registration with a possessory title the registrar is satisfied as to the title to the leasehold interest, he may register it as good leasehold,] whether the applicant consents to such registration or not, but in that case no higher fee shall be charged than would have been charged for registration with possessory title.

[L. T. Act, 1875, s. 11.]

(2) [Leasehold land held under a lease containing an absolute prohibition against all dealings therewith *inter vivos* shall not be registered in pursuance of this Act; and leasehold land held under a lease containing a restriction on any such dealings, shall not be registered under this Act unless and until provision is made in the prescribed manner (*c*) for preventing any dealing therewith in contravention of the restriction by an entry on the register to that effect, or otherwise.]

(3) Where on an application to register a mortgage term, wherein no right of redemption is subsisting, it appears that the applicant is entitled in equity to the superior term, if any, out of which it was created, the registrar shall register him as proprietor of the superior term without any entry to the effect that the legal interest in that term is outstanding, and on such registration the superior term shall vest in the proprietor and the mortgage term shall merge therein:

Provided that this subsection shall not apply where the mortgage term does not comprise the whole of the land included in the superior term, unless in that case the rent, if any, payable in respect of the superior term has been apportioned, or the rent is of no money value or no rent is reserved, and unless the covenants, if any, entered into for the benefit of the reversion have been apportioned (either expressly or by implication) as respects the land comprised in the mortgage term.

Subs. (3). "Mortgage term."

Under the repealed Acts a term created for mortgage purposes could not be registered, even though the right of redemption was barred (*d*). Under the new Act a mortgage term, "wherein no right of redemption is subsisting," may be registered.

"Entitled in equity to the superior term."

This equity would exist where, on the creation of the mortgage term, the mortgagor declared himself a trustee for the mortgagee of the nominal leasehold reversion.

(*b*) See L. R. Rules, 38.
(*c*) See L. R. Rules, 45.
(*d*) See L. T. Act, 1897, First Schedule.

Section ii.—*Effect of First Registration.*

(a) *Freehold Land.*

Sects. 5, 6 and 7 of the Act provide as follows:— L. R. Act, ss. 5 to 7.

5. [Where the registered land is a freehold estate, the registration of any person as first proprietor thereof with an absolute title shall vest in the person so registered an estate in fee simple] in possession [in the land, together with all rights, privileges, and appurtenances belonging or appurtenant thereto, subject to the following rights and interests, that is to say,— Effect of first registration with absolute title. [L. T. Act, 1875, s. 7.]

(a) Subject to the incumbrances,] and other entries, [if any, appearing on the register; and

(b) Unless the contrary is expressed on the register, subject to such] overriding interests, [if any, as affect the registered land; and

(c) Where the first proprietor is not entitled for his own benefit to the registered land subject, as between himself and] the persons entitled to minor interests, to any minor interests of such persons of which he has notice,

[but free from all other estates and interests whatsoever, including estates and interests of His Majesty.]

6. [Where the registered land is a freehold estate, the registration of any person as first proprietor thereof with a possessory title only shall not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of the first proprietor, and subsisting or capable of arising at the time of registration of that proprietor; but save as aforesaid, shall have the same effect as registration of a person with an absolute title.] Effect of first registration with possessory title. [L. T. Act, 1875, s. 8.]

7.—(1) [Where an absolute title is required, and on the examination of the title it appears to the registrar that the title can be established only for a limited period, or only subject to certain reservations, the registrar may, on the application of the party applying to be registered, by an entry made in the register, except from the effect of registration any estate, right, or interest— Qualified title. [L. T. Act, 1875, s. 9.]

(a) arising before a specified date, or

(b) arising under a specified instrument or otherwise particularly described in the register,

and a title registered subject to such excepted estate, right, or interest shall be called a qualified title.

(2) Where the registered land is a freehold estate, the registration of a person as first proprietor thereof with a qualified title shall have the same effect as the registration of such person with an absolute title, save that registration with a qualified title shall not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted.]

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(b) *Leasehold Land.*

L. R. Act, ss. 9 to 12.

Sects. 9, 10, 11 and 12 of the Act are as follows:—

Effect of first registration with absolute title.

[L. T. Act, 1875, s. 13; L. T. Rules, 1903, r. 55.]

9. [Where the registered land is a leasehold interest, the registration under this Act of any person as first proprietor thereof with an absolute title shall be deemed to vest in such person the possession of the leasehold interest described, with all implied or expressed rights, privileges, and appurtenances attached to such interest, subject to the following obligations, rights, and interests, that is to say,—

(a) Subject to all implied and express covenants, obligations, and liabilities incident to the registered land; and

(b) Subject to the incumbrances] and other entries [(if any) appearing on the register; and

(c) Unless the contrary is expressed on the register, subject to such] overriding interests, if any, [as affect the registered land; and

(d) Where such first proprietor is not entitled for his own benefit to the registered land subject, as between himself and] the persons entitled to minor interests, to any minor interests of such persons of which he has notice;

[but free from all other estates and interests whatsoever, including estates and interests of His Majesty.]

Effect of first registration with good leasehold title.

[L. T. Rules, 1903, r. 56.]

10. [Where the registered land is a leasehold interest, the registration of a person as first proprietor thereof with a good leasehold title shall not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease, but, save as aforesaid, shall have the same effect as registration with an absolute title.]

Effect of first registration with possessory title.

[L. T. Rules, 1903, r. 57.]

11. [Where the registered land is a leasehold interest, the registration of a person as first proprietor thereof with a possessory title shall not affect or prejudice the enforcement of any estate, right, or interest (whether in respect of the lessor's title or otherwise) adverse to or in derogation of the title of such first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor; but, save as aforesaid, shall have the same effect as registration with an absolute title.]

Qualified title.

[L. T. Rules, 1903, r. 58; L. T. Rules, 1908, III.]

12.—(1) [Where on examination it appears to the registrar that the title, either of the lessor to the reversion or of the lessee to the leasehold interest, can be established only for a limited period, or subject to certain reservations, the registrar may, upon the request in writing of the person applying to be registered, by an entry made in the register, except from the effect of registration any estate, right or interest—

(a) arising before a specified date, or

(b) arising under a specified instrument, or otherwise particularly described in the register,

and a title registered subject to any such exception shall be called a qualified title.]

[L. T. Rules, 1903, r. 59.]

(2) [Where the registered land is a leasehold interest, the registration of a person as first proprietor thereof with a qualified title shall not affect or prejudice the enforcement of any estate, right, or interest appearing by the register to be excepted, but, save as aforesaid, shall have the same effect as registration with] a good leasehold title or [an absolute title,] as the case may be.

(c) *Generally.*

L. R. Act, Part VI., ss. 69 to 81.

Part VI. of the Act contains "General Provisions as to Registration and the Effect thereof," and comprises sects. 69 to 81, whereof sects. 70, 73, 75, 78 and 81 have already been referred to (*e*).

L. R. Act, s. 69.

Sect. 69 of the Act provides as follows:—

Effect of registration on the legal estate.

69.—(1) The proprietor of land (whether he was registered before or after the commencement of this Act) shall be deemed to have vested in him without any conveyance, where the registered land is freehold, the legal estate in fee simple in possession, and where the registered land is leasehold the legal term created by the registered lease, but subject to the overriding interests, if any, including any mortgage term or charge by way of legal mortgage created by or under the Law of Property Act, 1925, or this Act or otherwise which has priority to the registered estate.

(2) Where any legal estate or term left outstanding at the date of first registration (whether before or after the commencement of this Act), or disposed of or created under section forty-nine of the Land Transfer Act, 1875, before the commencement of this Act, becomes satisfied (*f*), or the proprietor of the land becomes entitled to require the same to be vested in or surrendered to him, and the entry, if any, for protecting the same on the register has been cancelled, the same shall thereupon, without any conveyance, vest in the proprietor of the land, as if the same had been conveyed or surrendered to him as the case may be.

38 & 39 Vict. c. 87.

(3) If and when any person is registered as first proprietor of land in a compulsory area after the commencement of this Act, the provisions of the Law of Property Act, 1925, for getting in legal estates shall apply to any legal estate in the land which was expressed to be conveyed or created in favour of a purchaser or lessee before the commencement of this Act but which failed to pass or to be created by

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(*e*) Above, Chapter II.

(*f*) As to satisfied terms, see above, Part III., Chapter II., Section i.

Part VIII. Chap. III.

reason of the omission of such purchaser or lessee to be registered as proprietor of the land under the Land Transfer Acts, 1875 and 1897, and shall operate to vest that legal estate in the person so registered as proprietor on his registration, but subject to any mortgage term or charge by way of legal mortgage having priority thereto.

(4) The estate for the time being vested in the proprietor shall only be capable of being disposed of or dealt with by him in manner authorised by this Act.

(5) Nothing in this section operates to render valid a lease registered with possessory or good leasehold title.

Subs. (1). "Proprietor."

In the Registration Act, unless the context otherwise requires, "proprietor" means the registered proprietor *for the time being* of an estate in land or of a charge (*g*).

"Mortgage term or charge by way of legal mortgage."

It will be remembered that, after the commencement of the Property Act, a legal mortgage (*h*), whether created before or after such commencement, can take effect only as a mortgage term by demise or sub-demise or its equivalent, a charge by way of legal mortgage (*h*).

Subs. (2). L. T. Act, 1875, s. 49.

Sect. 49 of the Act of 1875 dealt with the "effect of unregistered dispositions," and is considered hereafter (*i*) in connection with the subject of "Unregistered dealings with registered land."

Subs. (3). Outstanding estates.

The provisions of the Property Act which are referred to in this sub-section are those contained in Part II. of the First Schedule to that Act (*k*).

Subs. (4). Dealings with registered estate.

The mode of disposing of or dealing with registered land is the subject of Part III. of the Act (*l*).

(*g*) L. R. Act, s. 3 (xx).
(*h*) See Table of Definitions, above, Part I., Chapter VII.; and above, Part III., Chapter III.
(*i*) Below, Chapter X.
(*k*) Above, Part III., Chapter II.
(*l*) Below, Chapter IV.

CHAPTER IV.

REGISTERED DEALINGS WITH REGISTERED LAND.

Section i.—*Preliminary.*

Extension of powers of disposition of registered land.

PART III. (*a*) of the Act, the heading to which is the same as the heading to this Chapter, contains provisions, and in particular in regard to freehold land, sect. 18, and in regard to leasehold land, sect. 21, which largely extend the powers of the "proprietor" to dispose of or deal with his "registered estate" by "registered dispositions," as compared with the like powers (*b*) conferred by the repealed Acts (*c*).

Definitions.

In this connection it is important to bear in mind the following definitions, which, by virtue of sect. 3 of the Act, apply, unless the context otherwise requires:—

"Land."

(viii) "Land" includes land of any tenure (including land, subject or not to manorial incidents, enfranchised under Part V. of the Law of Property Act, 1922), and mines and minerals, whether or not held with the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land;

"Mines and minerals."

(xiv) "Mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same, but not an undivided share thereof;

(*a*) Sects. 18 to 47.

(*b*) These were limited to a transfer of the registered land or of some part thereof and the creation of registered charges thereon.

(*c*) One consequence of this extension is that where a repealed enactment which is re-enacted uses the expression "transfer" the substituted enactment usually substitutes "disposition" for the noun and "dispose of" for the verb. Moreover, in the L. R. Act, "transfer" or "disposition," when referring to registered land, includes any authorised disposition, and "transferee" has a corresponding meaning: see sects. 18 (5), 21 (5), below, pp. 484, 487.

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(xix) "Prescribed" means prescribed by general rules made in pursuance of this Act;

"Prescribed."

(xx) "Proprietor" means the registered proprietor for the time being of an estate in land or of a charge;

"Proprietor."

(xxii) "Registered dispositions" mean dispositions which take effect under the powers conferred on the proprietor by way of transfer, charge, lease or otherwise and to which (*when required to be registered* (*d*)) special effect or priority is given by this Act *on registration* (*d*);

"Registered dispositions."

(xxiii) "Registered estate," in reference to land, means the legal estate, or other registered interest, if any, as respects which a person is for the time being registered as proprietor, but does not include a registered charge and a "registered charge" includes a mortgage or incumbrance registered as a charge under this Act;

"Registered estate."

(xxiv) "Registered land" means land or any estate or interest in land the title to which is registered under this Act *or any enactment replaced by this Act* (*d*), and includes any easement, right, privilege, or benefit which is appurtenant or appendant thereto, and any mines and minerals within or under the same and held therewith.

"Registered land."

Section ii.—*Dispositions of Freehold Land* (*e*).

Transfer the normal type of registered disposition.

What may be called the "normal" type of registered disposition, both under the repealed Acts and under the new Act, is a *transfer*, that is, a disposition whereby the proprietor divests himself completely and without any reservation or qualification, of the *whole* of his registered estate in the whole or in some part of the registered land.

L. R. Act, s. 18 (1).

Transfers of registered freeholds.

Other dispositions of registered freeholds.

Thus sub-sect. (1) of sect. 18 of the Act enacts that, where the registered land is a freehold estate, the proprietor may, in the prescribed manner (*f*), *transfer* the registered estate in the land or any part thereof; and then proceeds to specify a number of *other* dispositions which, *subject to any entry in the register to the contrary*, the proprietor may effect in the prescribed manner (*f*). These other dispositions all involve the retention or reservation of *some* interest in the registered estate. They apply to dispositions by way of charge or mortgage; and, subject to the restriction that no estate other than a "legal

Only a legal estate may be

(*d*) The *italics* are the writer's.
(*e*) This is the subject of sects. 18 to 20 of the L. R. Act.
(*f*) See L. R. Rules, Part III.

estate" (*g*) shall be capable of being disposed of or created, include practically every kind of disposition which would be competent to an absolute owner of unregistered freehold land.

disposed of or created.

Sect. 18 of the Act is as follows:—

Powers of disposition of registered freeholds. [L. T. Act, 1875, s. 29.]

18.—(1) [Where the registered land is a freehold estate the proprietor may, in the prescribed manner (*h*), transfer the registered estate in the land or any part thereof,] and, subject to any entry in the register to the contrary, may in the prescribed manner (*i*)—

(a) transfer the fee simple in possession of all or any mines or minerals apart from the surface; or of the surface without all or any of the mines and minerals;

(b) grant an annuity or a rentcharge in possession (either perpetual or for a term of years absolute) in any form which sufficiently refers in the prescribed manner to the registered land charged;

(c) grant in fee simple in possession any easement, right, or privilege in, over, or derived from the registered land or any part thereof, in any form which sufficiently refers, in the prescribed manner, to the registered servient tenement and to the dominant tenement, whether being registered land or not;

(d) transfer the fee simple in possession of the registered land or any part thereof, subject to the creation thereout, by way of reservation, in favour of any person (*k*) of an annuity or a rentcharge in possession (either perpetual or for a term of years absolute), or of any easement, right, or privilege in possession (either in fee simple or for a term of years absolute);

(e) grant (subject or not to the reservation of an easement, right, or privilege) a lease of the registered land or any part thereof, or of all or any mines and minerals apart from the surface, or of the surface without all or any of the mines and minerals, or of an easement, right or privilege in or over the land, or any part thereof, for any term of years absolute for any purpose (but where by way of mortgage subject to the provisions of this Act (*l*) and the Law of Property Act, 1925 (*m*), relating thereto), and in any form which sufficiently refers, in the prescribed manner, to the registered land.

(2) A perpetual annuity or rentcharge in possession may be granted or reserved to any person with or without a power of re-entry, exer-

(*g*) See Table of Definitions, above, Part I., Chapter VII.
(*h*) See L. R. Rules, 98.
(*i*) *Ib.*, 113.
(*k*) It will be noticed that the reservation may be in favour of *any* person and need not necessarily be in favour of the transferor.
(*l*) See L. R. Act, ss. 25 *et seq.*
(*m*) See above, Part III., Chapter III.

Part VIII. Chap. IV.

cisable at any time, on default of payment thereof, or on breach of covenant, and shall have incidental thereto all the powers and remedies (as varied if at all by the disposition creating the rentcharge) for recovery thereof conferred by the Law of Property Act, 1925 (*n*); and where an easement, right, or privilege is reserved in a registered disposition for a legal estate, the reservation shall operate to create the same for the benefit of the land for the benefit of which the right is reserved.

(3) A lease for a term, not exceeding twenty-one years, to take effect in possession or within one year from the date thereof at a rent without taking a fine may be granted and shall take effect under this section notwithstanding that a caution, notice of deposit of a certificate, restriction, or inhibition (other than a bankruptcy inhibition) may be subsisting, but subject to the interests intended to be protected by any such caution, notice, restriction, or inhibition.

(4) The foregoing powers of disposition shall (subject to the express provisions of this Act (*o*) and of the Law of Property Act, 1925 (*p*), relating to mortgages) apply to dispositions by the registered proprietor by way of charge or mortgage; but no estate, other than a legal estate, shall be capable of being disposed of, or created under, this section.

(5) In this Act "transfer" or "disposition" when referring to registered freehold land includes any disposition authorised as aforesaid; and "transferee" has a corresponding meaning.

L. R. Act, s. 19.

Registration.

Inasmuch as a disposition cannot take effect as a "registered disposition," unless and until registered, sect. 19 provides for the registration of any disposition authorised by sect. 18. It will be noticed that sub-sect. (1) of sect. 19 relates to the registration of a "transfer" strictly so called, and sub-sect. (2) relates to the registration of a disposition other than a transfer.

Sect. 19 provides as follows:—

Registration of disposition of freeholds. [L. T. Act, 1875, s. 29.]

19.—(1) [The transfer of the registered estate in the land or part thereof shall be completed by the registrar entering on the register the transferee as the proprietor of the estate transferred, but until such entry is made the transferor shall be deemed to remain proprietor of the registered estate;] and, [where part only of the land is transferred,] notice thereof shall also be noted on the register.

(2) All interests transferred or created by dispositions by the proprietor, other than a transfer of the registered estate in the land, or part thereof, shall, subject to the provisions relating to mortgages, be

(*n*) See above, Part III., Chapter XIII.
(*o*) See L. R. Act, ss. 25 *et seq.*
(*p*) See above, Part III., Chapter III.

completed by registration in the same manner and with the same effect as provided by this Act with respect to transfers of registered estates and notice thereof shall also be noted on the register:

Provided that nothing in this subsection—

(a) shall authorise the registration of a lease granted for a term not exceeding twenty-one years, or require the entry of a notice of such a lease if it is granted at a rent without taking a fine; or

(b) shall authorise the registration of a mortgage term where there is a subsisting right of redemption; or

(c) shall render necessary the registration of any easement, right, or privilege except as appurtenant to registered land, or the entry of notice thereof except as against the registered title of the servient land.

Every such disposition shall, when registered, take effect as a registered disposition, and a lease made by the registered proprietor under the last foregoing section which is not required to be registered or noted on the register shall nevertheless take effect as if it were a registered disposition immediately on being granted.

(3) The general words implied in conveyances under the Law of Property Act, 1925 (*o*), shall apply, so far as applicable thereto, to dispositions of a registered estate.

L. R. Act, s. 20.

Sect. 20 of the Act is important as prescribing the *effect* of the registration of dispositions of freeholds, that is, dispositions authorised by sect. 18. It will be seen that, in the case of a freehold estate registered with *absolute* title, the disposition is to operate in like manner as if the registered transferor or grantor were (*subject to any entry to the contrary in the register*) entitled to the registered land in fee simple in possession for his own benefit.

Sect. 20 is as follows:—

Effect of registration of dispositions of freeholds.

[L. T. Act, 1875, s. 30.]

20.—(1) [In the case of a freehold estate registered with an absolute title, a] disposition [of the registered land] or of a legal estate therein, including a lease thereof, [for valuable consideration shall, when registered, confer on the transferee] or grantee [an estate in fee simple] or the term of years absolute or other legal estate expressed to be created [in the land] dealt with, [together with all rights, privileges, and appurtenances belonging or appurtenant thereto,] including (subject to any entry to the contrary in the register) the appropriate rights and interests which would, under the Law of Property Act,

(*o*) L. P. Act, s. 62; above, Part III., Chapter XV., p. 224.

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1925 (*p*), have been transferred if the land had not been registered, [subject—

(a) to the incumbrances] and other entries, [if any, appearing on the register; and

(b) unless the contrary is expressed on the register, to] the overriding interests, [if any, affecting the estate transferred] or created,

[but free from all other estates and interests whatsoever, including estates and interests of His Majesty,] and the disposition shall operate in like manner as if the registered transferor or grantor were (subject to any entry to the contrary in the register) entitled to the registered land in fee simple in possession for his own benefit.

[L. T. Act, 1875, s. 31.]

(2) [In the case of a freehold estate registered with a qualified title a] disposition [of the registered land] or of a legal estate therein, including a lease thereof, [for valuable consideration shall, when registered, have the same effect as it would have had if the land had been registered with an absolute title, save that such] disposition [shall not affect or prejudice the enforcement of any right or interest appearing by the register to be excepted.]

[*Ib.*, s. 32.]

(3) [In the case of a freehold estate registered with a possessory title, a] disposition [of the registered land] or of a legal estate therein, including a lease thereof, [for valuable consideration shall not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor; but, save as aforesaid, shall when registered have the same effect as it would have had if the land had been registered with an absolute title.]

[*Ib.*, s. 33.]

(4) [Where any such] disposition [is made without valuable consideration, it shall, so far as the transferee] or grantee [is concerned, be subject to any] minor interests [subject to which the transferor] or grantor [held the same, but, save as aforesaid, shall, when registered, in all respects, and in particular as respects any registered dealings on the part of the transferee] or grantee, [have the same effect as if the] disposition [had been made for valuable consideration.]

Section iii.—*Dispositions of Leasehold Land.*

L. R. Act, ss. 21 to 23.

Application to leasehold land of provisions of ss. 18 to 20.

This is the subject of sects. 21 to 24 of the Act. Space does not permit of setting out or referring in detail to these sections; but, with the modifications incident to the difference in tenure, sects. 21 ("Powers of disposition of registered leaseholds"), 22 ("Registration of dispositions of leaseholds") and 23 ("Effect

(*p*) Apparently the reference is to sects. 62 and 63 of the L. P. Act, above, Part III., Chapter XV., p. 224.

of registration of dispositions of leaseholds") repeat the respective provisions of sects. 18 to 20. It may be mentioned, however, that in the Registration Act "transfer" or "disposition," when referring to registered leasehold land, includes any disposition authorised by sect. 21 (*q*), and "transferee" has a corresponding meaning; that the general words implied in conveyances under the Property Act (*r*) apply, so far as applicable, to "transfers" of a registered leasehold estate (*s*); and that, inasmuch as leasehold land may be registered not only with an absolute, a qualified, or a possessory title, but also with a good leasehold title (*t*), sub-sect. (2) of sect. 23 of the Act enacts as follows:—

L. R. Act, s. 23 (2).

Effect of registration of dispositions of land registered with good leasehold title.

(2) [In the case of a leasehold estate registered with a good leasehold title,] a disposition (including a subdemise thereof) [for valuable consideration shall, when registered, have the same effect as it would have had if the land had been registered with an absolute title, save that it shall not affect or prejudice the enforcement of any right or interest affecting or in derogation of the title of the lessor to grant the lease.]

[L. T. Act, 1875, s. 35.; L. T. Rules, 1903, r. 141.]

Sect. 24 of the Act prescribes, by sub-sect. (1) (*u*), what covenants are to be implied on the transfer, otherwise than by way of underlease, of a leasehold interest in land under the Act, unless there be an entry on the register negativing such implication; and, by sub-sect. (2) (*v*), what covenants are to be so implied where part only of the land held under a lease is transferred.

L. R. Act, s. 24.

"Implied covenants on transfers of leaseholds."

Section iv.—*Charges on Freehold and Leasehold Land* (*w*).

Sect. 25 of the Act provides as follows:—

L. R. Act, s. 25.

Proprietor's power to create charges.

25.—(1) [The proprietor of any registered land may] by deed—

(a) [charge the registered land with the payment at an appointed time of any principal sum of money either with or without interest;]

[L. T. Act, 1875, s. 22.]

(*q*) See L. R. Act, s. 21 (5).
(*r*) L. P. Act, s. 62; above, Part III., Chapter XV., p. 224.
(*s*) L. R. Act, s. 22 (3).
(*t*) Above, Chapter III., p. 475.
(*u*) Re-enacting, in substance, sect. 39 of the L. T. Act, 1875.
(*v*) This sub-section is new.
(*w*) This is the subject of sects. 25 to 36. Apart from sect. 25, only such of these sections as introduce new law can here be referred to. For such of them as replace repealed sections, see the second column of the Table in Chapter I., above, pp. 460 *et seq.*

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(b) [charge the registered land in favour of a building society under the Building Societies Acts, 1874 to 1894, in accordance with the rules of that society.]

[L. T. Act, 1897, s. 9 (3).]

(2) A charge may be in any form (*x*) provided that—

(a) the registered land comprised in the charge is described by reference to the register or in any other manner sufficient to enable the registrar to indentify the same without reference to any other document;

(b) the charge does not refer to any other interest or charge affecting the land which—

(i) would have priority over the same and is not registered or protected on the register,

(ii) is not an overriding interest.

[L. T. Act, 1897, s. 9 (4).]

(3) [Any provision contained in a charge which purports to—

(i) take away from the proprietor thereof the power of transferring it by registered disposition or of requiring the cessation thereof to be noted on the register; or

(ii) affect any registered] land or charge other than that in respect of which the charge is to be expressly registered,

shall be void.

Registration of charges.

The charge must, of course, be duly registered (*y*).

Assimilation of registered charges to legal mortgages of unregistered land.

With regard to the incidents of registered charges, it may be stated generally that the new Act assimilates them, in many respects, to those of "legal mortgages" of unregistered land.

L. R. Act, s. 27.

For example, the object of sect. 27 of the Act is to secure that every registered charge shall, by virtue of an express or implied demise or subdemise, and unless otherwise expressly provided in the charge itself, confer on the chargee a "legal estate," which shall subsist concurrently with, and so as not to impair, the "legal estate" of the person creating the charge.

The section is as follows:—

Terms of years implied in or granted by charges.

27.—(1) A registered charge shall, unless made or taking effect by demise or subdemise, and subject to any provision to the contrary contained in the charge, take effect as a charge by way of legal mortgage (*z*).

(*x*) As to the prescribed form, see L. R. Rules, 139, and Form 45.
(*y*) See L. R. Act, s. 26.
(*z*) See Table of Definitions, above, Part I., Chapter VII.

(2) Subject to the provisions of the Law of Property Act, 1925 (*a*), a registered charge may contain in the case of freehold land, an express demise, and in the case of leasehold land an express subdemise of the land to the creditor for a term of years absolute, subject to a proviso for cesser on redemption.

(3) Any such demise or subdemise or charge by way of legal mortgage shall take effect from the date of the delivery of the deed containing the same, but subject to the estate or interest of any person (other than the proprietor of the land) whose estate or interest (whenever created) is registered or noted on the register before the date of registration of the charge.

(4) Any charge registered before the commencement of this Act shall take effect as a demise or subdemise of the land in accordance with the provisions of the Law of Property Act, 1925 (*b*), and the registered estate shall (without prejudice to any registered charge or any term or subterm created by a charge or by this Act) vest in the person appearing by the register to be entitled to the ultimate equity of redemption.

The following section of the Act appears to be consequential on the provisions of sect. 94 of the Property Act relating to "Tacking and further advances" (*c*):—

L. R. Act, s. 30.

Protection of charges for securing further advances.

30.—(1) When a registered charge is made for securing further advances, the registrar shall, before making any entry on the register which would prejudicially affect the priority of any further advance thereunder, give to the proprietor of the charge at his registered address, notice by registered post of the intended entry, and the proprietor of the charge shall not, in respect of any further advance, be affected by such entry, unless the advance is made after the date when the notice ought to have been received in due course of post.

(2) If, by reason of any failure on the part of the registrar or the post office in reference to the notice, the proprietor of the charge suffers loss in relation to a further advance, he shall be entitled to be indemnified under this Act in like manner as if a mistake had occurred in the register; but if the loss arises by reason of an omission to register or amend the address for service (*d*), no indemnity shall be payable under this Act.

(*a*) L. P. Act, ss. 85, 86, above, Part III., Chapter III., pp. 115 *et seq.*

(*b*) L. P. Act, First Schedule, Parts VII. and VIII.; above, *ib.*, pp. 111 *et seq.*

(*c*) Above, Part III., Chapter III., pp. 127 *et seq.*

(*d*) As to "Addresses for service and notices," see L. R. Act, s. 79, re-enacting sects. 89 to 92 of the L. T. Act, 1875.

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Sect. 32 of the Act is as follows:—

L. R. Act, s. 32 (*e*). Provisions when charge registered in names of several proprietors.

32. Where a charge is registered in the names of two or more proprietors (whether jointly or in undivided shares) the mortgage term implied or comprised in the charge shall (but without prejudice to the beneficial interests in the mortgage money) vest in them as joint tenants, and the proprietors or the survivors or survivor of them or the personal representatives of the last survivor, shall have power to give valid receipts, notwithstanding that the mortgage money may be held in undivided shares, in like manner as if the money had been held on a joint account.

L. R. Act, s. 33. "Transfer of charges."

Sub-sects. (1) to (3) of sect. 33 of the Act re-enact the provisions (*f*) of sect. 40 of the Act of 1875, as amended by the First Schedule to the Act of 1897, in regard to transfers of registered charges, and the registration of such transfers.

Sub-sects. (4) and (5) are new, and provide as follows:—

Vesting of term or subterm.

(4) On registration of any transfer of a charge, the term or subterm (if any) granted expressly or by implication by the charge or any deed of alteration shall, without any conveyance or assignment and notwithstanding anything to the contrary in the transfer or any other instrument, vest in the proprietor for the time being of the charge.

Effect of such vesting.

(5) Subject to any entry to the contrary on the register, the vesting of any term or subterm in accordance with this section in the proprietor of a charge shall, subject to the right of redemption, have the same effect as if such proprietor had been registered as the transferee for valuable consideration of the term or subterm.

L. R. Act, s. 34.

Sub-sect. (1) of sect. 34 of the Act is important as conferring on a chargee, subject to any entry to the contrary on the register, *all* the powers conferred by law on the owner of a legal mortgage (*g*), and takes the place of sects. 25, 26 and 27 of the Act of 1875, which conferred on a chargee the powers specified in those sections respectively. Sub-sects. (2) to (6) of sect. 34 of the new Act deal with the "realisation" of charges, and should be compared with the corresponding provisions of the Property Act (*h*).

(*e*) This section alters the law and practice as laid down in rule 163 of the L. T. Rules, 1903.

(*f*) Except the provision in sect. 40 of the L. T. Act, 1875, as to the issue of a fresh certificate. The provisions as to certificates are collected in Part V. of the L. R. Act.

(*g*) See L. P. Act, ss. 85 to 120, above, Part III., Chapter III.

(*h*) L. P. Act, ss. 88, 89, above, Part III., Chapter III., pp. 123 *et seq.*

Sect. 34 of the Act is as follows:—

34.—(1) Subject to any entry on the register to the contrary, the proprietor of a charge shall have and may exercise all the powers conferred by law on the owner of a legal mortgage. Powers of proprietor of charge.

(2) Subject to any entry to the contrary on the register and subject to the right of any persons appearing on the register to be prior incumbrancers, the proprietor of a charge may, after entry into possession and after having acquired a title under the Limitation Acts (*i*), execute a declaration, in the prescribed form (*k*), that the right of redemption is barred, and thereupon he shall be entitled, subject to furnishing any evidence which may be prescribed in support thereof, to be registered as proprietor of the land, with the same consequences as if he had been a purchaser for valuable consideration of the land under the power of sale. Title under the Limitation Acts.

(3) An order for foreclosure shall be completed by the registration of the proprietor of the charge (or such other person as may be named in the foreclosure order absolute for that purpose) as the proprietor of the land, and by the cancellation of the charge and of all incumbrances and entries inferior thereto; and such registration shall operate in like manner and with the same consequences as if the proprietor of the charge or other person aforesaid had been a purchaser for valuable consideration of the land under a subsisting power of sale. Foreclosure.

(4) A sale by the court or under the power of sale shall operate and be completed by registration in the same manner, as nearly as may be (but subject to any alterations on the register affecting the priority of the charge), as a transfer for valuable consideration by the proprietor of the land at the time of the registration of the charge would have operated or been completed, and, as respects the land transferred, the charge and all incumbrances and entries inferior thereto shall be cancelled. Sale.

(5) Notwithstanding the creation of a term or subterm, expressly or by implication, under this Act, such transfer shall (subject to any prior incumbrances or other entries on the register) operate to transfer the registered estate, and the mortgage term or subterm shall become merged, and any purported disposition of or dealing with the mortgage term or subterm apart from the charge, and any process or act purporting to keep alive that term or subterm after the cessation of the charge shall be void. Merger of mortgage term or subterm.

(6) For the purposes of this section an incumbrance or entry on the register shall not be deemed to be inferior to the charge in right of which title is made if the incumbrance or other interest is given the requisite priority by statute or otherwise. Saving of statutory priorities (*l*).

(*i*) See Table of Definitions, above, Part I., Chapter VII.
(*k*) See L. R. Rules, 149 and Form 52.
(*l*) See *ib.*, 157.

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L. R. Act, s. 35. "Discharge of charges."

Sect. 35 of the Act provides for the discharge of charges and for the merger of the term or sub-term implied in or granted by the same.

L. R. Act, s. 36. "Rules as to sub-charges."

Rules 163 to 166 as to sub-charges have been made under sect. 36 of the Act.

The rules as to charges include the following:—

L. R. Rules, 141, 148. Effect on powers of the registration of a charge.

141.—(1) The proprietor of the land, while in possession, shall have all the powers of leasing and of accepting surrenders of leases conferred by sections 99 and 100 (*m*) of the Law of Property Act, 1925, as extended by the instrument of charge or any instrument varying the terms thereof, but subject to any contrary intention expressed in any such instrument, a note of which intention shall, under an application to be made for that purpose, be entered in the register.

(2) The proprietor of a charge, while in possession, or after a receiver has been appointed, or such receiver on his behalf, shall have all the powers conferred by the said two sections (as extended as aforesaid), but subject to any contrary intention expressed as aforesaid, a note of which intention shall, under an application to be made for that purpose, be entered in the register.

(3) The proprietor of an annual sum, within the meaning of section 121 (*n*) of the Law of Property Act, 1925, charged on registered land or the income thereof, shall have power to create a term in accordance with that section; and if that term would have been legal, or clothed with a legal estate (had the land not been registered), it may, on an application made for that purpose, be registered.

(4) Subject as aforesaid all dispositions, by the proprietor of the land, authorised by sections 18 and 21 (*o*) of the Act, shall, unless the proprietor of the charge concurs in the disposition, take effect subject to any charge registered at the time of the disposition.

(5) This rule has effect without prejudice to section 104 (*p*) of the Act.

Effect of dispositions by proprietor of a charge.

148. Subject to any entry to the contrary on the register, any disposition by the proprietor of a charge (other than a lease within section 104 (*p*) of the Act) shall have the same effect as dispositions under sections 20, 23 (*q*) and 40 (*r*) of the Act, as the case may be, save that such dispositions shall be subject only to the overriding interests (if any) and to the incumbrances and other entries (if any) appearing on the register which have priority over the charge under which the disposition is made.

(*m*) See above, Part III., Chapter III., p. 130.
(*n*) See above, Part III., Chapter XIII., p. 214.
(*o*) See above, pp. 483 and 486.
(*p*) See below, Part IX., Section XX.
(*q*) See above, pp. 485 and 487.
(*r*) See below, p. 494.

Section v.—*As to Dealings Generally* (*s*).

Sub-sects. (1) and (2) of sect. 37 of the Act, and rule 81, made under sub-sect. (3) of the same section, relating to dispositions by a person entitled to be registered as proprietor of land or of a charge before he has been registered as such, replace respectively sect. 9 (6) of the Act of 1897, and rule 104 of the Land Transfer Rules, 1903.

L. R. Act, s. 37. "Powers of persons entitled to be registered."

L. R. Rules, 81. "Instruments by persons entitled to be registered as proprietor."

Sect. 38 of the Act is as follows:—

L. R. Act, s. 38. Certain provisions of the Law of Property Act to apply.

38.—(1) The provisions as to execution of a conveyance on sale contained in the Law of Property Act, 1925 (*t*), shall apply, so far as applicable thereto, to transfers on sale of registered land.

(2) Rules (*u*) may be made for prescribing the effect of covenants implied by virtue of the Law of Property Act, 1925 (*x*), in dispositions of registered land.

Sect. 39 of the Act is important as avoiding, and therefore rendering useless, with certain exceptions, any instrument *off* the register purporting to give effect to a transaction, if and so far as the transaction (1) relates exclusively to registered land or to a registered charge, and (2) is capable of being effected, and is effected, by a registered disposition.

L. R. Act, s. 39.

The section is as follows:—

Deeds off register, how far to be void.

39.—(1) Where any transaction relating exclusively to registered land or to a registered charge is capable of being effected and is effected by a registered disposition, then, subject to any prescribed exceptions, any deed or instrument, other than the registered disposition, which is executed by the proprietor for the purpose of giving effect to the transaction shall be void, but only so far as the transaction is carried out by the registered disposition.

(2) Rules may be made for providing for cases in which any additional deed or instrument may be properly executed and for enabling the registrar to certify that in any special cases an additional deed or instrument will be proper and valid.

(*s*) L. R. Act, ss. 37 to 40.

(*t*) Probably the reference is to sections 51 to 75 of the L. P. Act (above, Part III., Chapter XV., pp. 222 *et seq.*), relating to "Conveyances and other Instruments," or such of them as may be applicable; and see sect. 75 ("Rights of purchaser as to execution") and L. T. Act, 1897, s. 9 (1).

(*u*) See L. R. Rules, 77.

(*x*) See below, Part IX., Section XIX.

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L. R. Rules, 96.

Certificate as to the necessity of deeds off the register.

Rule 96, made under sub-sect. (2), is as follows:—

96. Pursuant to section 39 of the Act it is hereby provided that, where a transaction (though relating exclusively to registered land or to a registered charge) is of such a character (by reason, for instance, of its being accompanied by lengthy recitals or personal covenants not affecting the substance of the transaction in relation to the registered land or charge or of its being closely involved with other transactions or of its being necessary that duplicates should be held by different persons) as to render it necessary or useful that the registered disposition should be accompanied by an additional deed or instrument, the registrar may issue a certificate to that effect in such form as he shall think fit, and in that case the additional deed or instrument shall, if in accordance with such certificate, be an exception within the meaning of the said section and shall not be rendered void by that section.

L. R. Act, s. 40.

"Creation and discharge of restrictive covenants."

Subss. (1) and (2).

By sect. 40 of the Act the proprietor may, subject as therein mentioned, (1) in any registered disposition (*y*) or other instrument, by covenant, condition or otherwise, impose or make binding, so far as the law permits (*z*), any obligation or reservation with respect to the building on or other user of the registered land or any part thereof, or with respect to mines and minerals, or with respect to any other thing (*a*); and (2) release or waive any rights arising by reason of any covenant or condition, or release any obligation or reservation the benefit of which is annexed or belongs to the registered land (*b*).

Subs. (3).

Entries in register.

L. R. Rules, 212.

Entry and discharge of restrictive covenants.

Sub-sect. (3) of the same section provides for appropriate entries being made on the register in the prescribed manner, and rule 212 accordingly provides as follows:—

212. Restrictive covenants created under section 40, or noted against a title under section 50 (*c*) of the Act, shall be entered in the Charges Register, in the method directed by section 50 (*c*), and any release, waiver, discharge, or modification shall be noted on the register in such manner as the registrar may direct.

(*y*) See L. R. Rules, 135 and Form 43. Covenants to expend money or to do any work on the land may be added to the transfer, but only restrictive covenants can be registered (see note to Form 43).

(*z*) See L. P. Act, ss. 78 to 80, above, Part III., Chapter XV., pp. 227 to 230.

(*a*) L. R. Act, s. 40 (1).

(*b*) *Ib.*, (2). This sub-section authorises the proprietor in reference to the registered land to give any licence, consent or approval which a tenant for life is by the S. L. Act authorised to give in reference to settled land. (See S. L. Act, s. 59 (2), above, Part IV., Chapter V., p. 322.)

(*c*) See Chapter V., below, p. 500.

Section vi.—*Transmissions of Land and Charges on Death and Bankruptcy* (*d*).

L. R. Act, s. 41. "Transmissions of land and charges on death of proprietor."

Subs. (1). Personal representative. Special or additional personal representative.

Sub-sect. (1) of sect. 41 of the Act provides that on the death of the sole proprietor, or of the survivor of two or more joint proprietors, of any registered land or charge, his personal representative shall be entitled to be registered as proprietor in his place; with the proviso that where a special or additional personal representative is appointed by the Court in reference to a registered estate (*e*), then on production of the order he shall be registered as proprietor either solely or jointly with any of the other personal representatives, as the case may require.

Subs. (2). Lodgment of caution.

By sub-sect. (2), pending an application for the appointment of a special or additional personal representative, a caution against dealings may be lodged by any person intending to apply to the Court for the appointment.

Subs. (3). Rules.

By sub-sect. (3) provision shall be made by rules for the manner in which effect is to be given on the register to transmissions on death.

Subs. (4). Assent.

By sub-sect. (4) an assent (*f*) by a personal representative shall, in the case of registered land, be in the prescribed form, and the production of the assent in that form shall authorise the registrar to register the person named in the assent as the proprietor of the registered land.

L. R. Rules 170.

The following rule has been made pursuant to sub-sect. (3) of this section:—

Transfer, &c., by personal representative.

170. Pursuant to subsection (3) of section 41 of the Act it is hereby provided that—

(1) The personal representative of a deceased proprietor may, without being himself registered, transfer any registered land or charge of which the deceased was registered as proprietor, or may dispose of it by way of assent or appropriation or vesting assent.

(*d*) L. R. Act, ss. 41 to 47.

(*e*) That is, in the case of settled land: see A. E. Act, s. 23, above, Part VII., Chapter III., p. 437.

(*f*) See A. E. Act, s. 36, below, Part IX., Section VII.

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(2) If he transfers the transfer shall be in the usual form.

(3) If he assents or appropriates or executes a vesting assent the instrument shall be in Forms 56 or 57 (*g*), as the case may be.

(4) On delivery of the transfer, assent, appropriation or vesting assent at the registry, accompanied, if the personal representative is not already registered as proprietor, by the probate or letters of administration, the registrar shall register the person named in the instrument for that purpose as proprietor, together with the restrictions (if any) contained herein.

(5) It shall not be the duty of the registrar nor shall he be entitled to consider or to call for any information concerning the reason why any transfer is made, or as to terms of the will, and, whether he has notice or not of its contents, he shall be entitled to assume that the personal representative is acting (whether by transfer, assent or appropriation or vesting assent) correctly and within his powers.

L. R. Act, s. 42. "Transmissions on bankruptcy of proprietor."

Sub-sect. (1) (*h*) of sect. 42 provides for the registration as proprietor of the trustee in bankruptcy upon the bankruptcy of the proprietor of any registered land or charge, or, pending the appointment of a trustee, of the official receiver; and sub-sect. (2) contains a new provision for the registration of a person in whom a registered lease, disclaimed under sect. 54 of the Bankruptcy Act, 1914, has been vested by an order of the Court.

L. R. Act, s. 43. "Effect of transmissions."

Ib., s. 45. "Proof of transmission of registered proprietorship."

L. R. Act, s. 44.

Sects. 43 and 45 of the Act re-enact respectively sects. 46 and 47 of the Act of 1875 without modification, except that in sect. 43 "minor interests" takes the place of "unregistered estates, rights, interests or equities."

Sect. 44 of the Act is new, and illustrates the principle that the registered proprietor for the time being of a registered charge shall always have, or be deemed to have, a legal estate vested in him by virtue of the charge.

(*g*) Form 57 is a "vesting assent" framed to comply with sect. 8 (4) of the S. L. Act, above, Part IV., Chapter IV., p. 287. It must contain an application for the entry of a restriction in Form 9, if a "tenant for life" is to be registered as proprietor, or in Form 10, if "statutory owners" are to be registered as proprietors.

(*h*) Re-enacting L. T. Act, 1875, s. 43, as amended by L. T. Act, 1897, Schedule I.

The section is as follows:—

Vesting of term or subterm on transmission of charge.

44.—(1) On the registration of any transmission of a charge the term or subterm granted (expressly or by implication) by the charge or any deed of alteration shall without any conveyance or assignment vest in the proprietor for the time being of the charge.

(2) Subject to any entry to the contrary on the register, the vesting of a term or subterm in accordance with this section in the proprietor of a charge, shall, subject to the right of redemption, have the same effect as if such proprietor had been registered as the transferee for valuable consideration of the term or subterm.

Section vii.—*Subsidiary Provisions* (*i*).

L. R. Act, s. 46. "Determination or variation of leases, incumbrances, &c."

Sect. 46 provides for the notification in the prescribed manner (*k*) on the register of the determination (whole or partial) or variation of any lease, incumbrance, rentcharge, easement, right or other interest, which is registered or is noted on the register as an incumbrance, on proof of such determination or variation.

L. R. Act, s. 47. Vesting instruments and dispositions in name of proprietor. 15 Geo. 5, c. 19.

Sect. 47 of the Act is new, and provides as follows:—

47.—(1) The registrar shall give effect on the register to any vesting order or vesting declaration (express or implied) made on the appointment or discharge of a trustee or otherwise, and to dispositions made in the name and on behalf of a proprietor by a person authorised to make the disposition; and the provisions of the Trustee Act, 1925, relating to the appointment and discharge of trustees and the vesting of trust property (*l*), shall apply to registered land subject to the proper entry being made on the register.

(2) The registrar shall also give effect on the register in the prescribed manner to any vesting instrument which may be made pursuant to any statutory power.

Subs. (2). Vesting instrument. Vesting transfer.

In the Registration Act "vesting instrument" has the same meaning as in the Settled Land Act (*m*). The rules (*n*) provide a special form of "vesting transfer" to be used when registered land is transferred into settlement.

(*i*) L. R. Act, ss. 46, 47. See also sect. 52 ("Effect of Notices"), below, Chapter V., p. 501.
(*k*) See L. R. Rules, 200 to 209.
(*l*) See above, Part V., Chapters V. and VI.
(*m*) See Table of Definitions, above, Part I., Chapter VII.
(*n*) See L. R. Rules, 99 and Forms 21 and 22. See also rules 100, 101 and 102.

CHAPTER V.

NOTICES, CAUTIONS, INHIBITIONS AND RESTRICTIONS.

Section i.—*Introductory.*

L. R. Act, Part V., ss. 48 to 62.

Subject matter.

Re-enactments.

PART V. (*a*) of the Act, the heading to which is the same as the heading to this chapter, comprises several sections (*b*) which merely re-enact, with or without amendment, similar enactments in the repealed Acts; and this chapter will be devoted mainly to the consideration of such provisions of this Part of the Act as introduce new law.

Section ii.—*Notices* (*c*).

Of what interests notices may be registered.

The unregistered interests of which notices may be registered are (1) leases, (2) the miscellaneous rights, interests and claims specified in sect. 49 (1), (3) restrictive covenants, and (4) manorial incidents.

1. "Registration of notice of lease."

L. R. Act, s. 48.

[L. T. Act, 1875, ss. 50, 51.]

Lease, when noted, is an *incumbrance*.

Any lessee or other person entitled to or interested in a lease of registered land, *where the term granted is not an overriding interest* (*d*), may (with the concurrence of the proprietor of the registered land affected or under an order of the Court (*e*)) apply to the registrar to register notice of such lease in the prescribed (*f*) manner (*g*). Where the notice is so registered, every proprietor and the persons deriving title under him shall

(*a*) Sects. 48 to 62.

(*b*) Namely, sects. 48 and 53 to 58. See the second column of the Table on p. 462, above.

(*c*) L. R. Act, ss. 48 to 52.

(*d*) The words in italics are new. For "overriding interests," see above, Chapter II., p. 467.

(*e*) L. R. Act, s. 48 (2). Where the lease is binding on the proprietor, neither his concurrence nor an order of the Court is required. (See proviso to sub-sect. (2).)

(*f*) See L. R. Rules, 186 to 189.

(*g*) L. R. Act, s. 48 (1).

be deemed to be affected with notice of such lease, as being an *incumbrance* (*h*) on the registered land in respect of which the notice is entered (*i*).

2. "Rules to provide for notices of other rights, interests and claims." L. R. Act, s. 49 (1).

Sub-sect. (1) of sect. 49 of the Act enacts that the provisions of sect. 48 shall be extended by the rules (*k*) so as to apply to the registration of notices of or claims in respect of the following:—

(a) The grant or reservation of any annuity or rentcharge in possession, either perpetual or for a term of years absolute:

(b) The severance of any mines or minerals from the surface, except where the mines and minerals severed are expressly included in the registration:

(c) Land charges (*l*) until the land charge is registered as a registered charge (*m*):

(d) The right of any person interested in the proceeds of sale of land held on trust for sale or in land subject to a settlement to require that (unless a trust corporation is acting as trustee) there shall be at least two trustees of the disposition on trust for sale or of the settlement (*n*):

(e) [The rights of any widow in respect of dower] or under the Intestates' Estates Act, 1890, and any right to free bench or other like right saved by any statute coming into force concurrently with this Act (*o*) (which rights shall take effect in equity as minor interests): [L. T. Act, 1875, s. 52.] 53 & 54 Vict. c. 29.

(f) Creditors' notices (*p*) and any other right, interest, or claim which it may be deemed expedient to protect by notice instead of by caution, inhibition, or restriction.

What estates, &c., may not be noted. *Ib.*, subs. (2).

Sub-sect. (2) of the same section provides that, except as thereby provided, a notice shall not be registered in respect of any estate, right or interest which (independently of the Act) is capable of being overriden by the proprietor under a trust for sale (*q*), or the powers of the Settled Land Act (*q*), or any

(*h*) That is, *not* an "overriding interest." See above, Chapter II., p. 467.
(*i*) L. R. Act, s. 48 (1). But see the proviso to that sub-section.
(*k*) See L. R. Rules, 190, and Form 59.
(*l*) For the meaning of "land charges," see Table of Definitions, above, Part I., Chapter VII.
(*m*) Namely, under sect. 59 (2), below.
(*n*) See T. Act, s. 14, above, Part V., Chapter IV., pp. 361 *et seq.*
(*o*) See A. E. Act, s. 45 (1) (c), above, Part VII., Chapter V., p. 450.
(*p*) See L. R. Act, s. 61, below, Section vi., p. 505.
(*q*) See L. P. Act, s. 2, above, Part III., Chapter XI., pp. 203 *et seq.*

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other statute, or of a settlement (*q*), and of being protected by a restriction (*r*) in the prescribed manner.

Saving of certain powers. *Ib.*, subs. (3).

Sub-sect. (3) of sect. 49 is as follows:—

(3) A notice when registered in respect of a right, interest, or claim shall not affect prejudicially—

(a) The powers of disposition of the personal representative of the deceased under whose will or by the operation of whose intestacy the right, interest, or claim arose; or

(b) The powers of disposition (independently of this Act) of a proprietor holding the registered land on trust for sale (*s*).

3. Restrictive covenants.

Definition of "restrictive covenant" in L. C. Act.

That Act does not apply to registered land.

As we have seen (*t*), a covenant or agreement (not being a covenant or agreement made between a lessor and lessee) restrictive of the user of land *entered into after the commencement of the Land Charges Act* is "a restrictive covenant" within the meaning of that Act, and is a land charge of Class D. We have also seen (*u*) that that Act does not apply to land charges (other than local land charges), if and so far as they affect registered land, and can be protected under the Registration Act.

"Equivalent registration" under L. R. Act.

That protection is afforded, in the case of restrictive covenants, by sect. 50 of the Registration Act, which, as will be seen, provides that notice under that section "shall take the place of registration as a land charge," that is, registration under the Land Charges Act.

The section is as follows:—

Notices of restrictive covenants. [Compare L. T. Act, 1875, s. 84, as amended by L. T. Act, 1897, Sched. I.]

50.—(1) Any person entitled to the benefit of a restrictive covenant or agreement (not being a covenant or agreement made between a lessor or lessee) with respect to the building on or other user of registered land (*v*) may apply to the registrar to enter notice thereof on the register, and where practicable the notice shall be by reference to the instrument, if any, which contains the covenant or agreement, and a copy or abstract of such instrument shall be filed at the registry; and

(*q*) See L. P. Act, s. 2, above, Part III., Chapter XI., pp. 203 *et seq.*

(*r*) See below, Section v., p. 503.

(*s*) See above, Part III., Chapter VII.

(*t*) Above, Part VI., Chapter VI., Section v., p. 412.

(*u*) L. C. Act, s. 23, *ib.*, Chapter IX., p. 423.

(*v*) It will be noticed that the section is not *expressly* limited to a covenant or agreement entered into *after* the commencement of the Act. As to entries under this section, see L. R. Rules, 212.

where any such covenant or agreement appears to exist at the time of first registration, notice thereof shall be entered on the register. In the case of registered land the notice aforesaid shall take the place of registration as a land charge.

(2) When such a notice is entered the proprietor of the land and the persons deriving title under him (except incumbrancers or other persons who at the time when the notice is entered may not be bound by the covenant or agreement) shall be deemed to be affected with notice of the covenant or agreement as being an incumbrance (*w*) on the land.

(3) Where the covenant or agreement is discharged or modified by an order under the Law of Property Act, 1925 (*x*), or otherwise, or the Court refuses to grant an injunction for enforcing the same, the entry shall either be cancelled or reference made to the order or other instrument and a copy of the order, judgment, or instrument shall be filed at the registry.

(4) The notice shall, when practicable, refer to the land, whether registered or not, for the benefit of which the restriction was made.

4. Manorial incidents.

Sect. 51 of the Act provides as follows:—

Notice of manorial incidents.

51. Where land is affected by manorial incidents (*y*), the registrar may enter a note of that fact on the register, and may cancel such note when extinguishment (*z*) of the manorial incidents has been proved to his satisfaction.

Sect. 52 of the Act provides as follows in regard to the effect of notices:—

Effect of notices.

52.—(1) A disposition by the proprietor shall take effect subject to all estates, rights, and claims which are protected by way of notice on the register at the date of the registration or entry of notice of the disposition, but only if and so far as such estates, rights, and claims may be valid and are not (independently of this Act) overridden by the disposition.

(2) Where notice of a claim is entered on the register, such entry shall operate by way of notice only, and shall not operate to render the claim valid whether made adversely to or for the benefit of the registered land or charge.

Section iii.—*Cautions* (*a*).

Two kinds of caution.

Cautions are of two kinds: (1) against first registration, and (2) against dealings with registered land or a registered charge.

(*w*) See above, p. 499, note (*h*).
(*x*) See L. P. Act, s. 84, above, Part I., Chapter XV., p. 231.
(*y*) See L. P. Act, 1922, s. 128, above, Part II., Chapter II., p. 62.
(*z*) See above, Part II., Chapter III. (*a*) L. R. Act, ss. 53 to 56.

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1. "Cautions against first registration." L. R. Act, s. 53. [L. T. Act, 1875, ss. 60 to 62.]

A caution of the first kind may be lodged by "any person having or claiming such an interest in land not already registered as entitles him to object to any disposition thereof being made without his consent," and is to be in such form, supported by such evidence, and to have such consequences as are prescribed respectively by sub-sects. (1), (2) and (3) of sect. 53 (*b*) of the Act, re-enacting respectively sects. 60, 61 and 62 of the Act of 1875.

2. "Cautions against dealings." L. R. Act, s. 54. [L. T. Act, 1875, s. 53.]

Sect. 54 (*c*) of the Act re-enacts, with some modifications, the provisions of sect. 53 of the Act of 1875 as to a caution of the second kind, which may be lodged by "any person interested under any unregistered instrument, or interested as a judgment creditor, or otherwise howsoever, in any land or charge registered in the name of any other person."

L. R. Act, s. 55. "Effect of cautions against dealings." [L. T. Act, 1875, ss. 54, 55.]

Sect. 55 of the Act re-enacts, with some modifications, sects. 54 and 55 of the Act of 1875.

L. R. Act, s. 56. "General provisions as to cautions." [L. T. Act, 1875, ss. 56, 63, 64.]

Sub-sects. (1) to (3) of sect. 56 of the Act re-enact sects. 56, 63 and 64 of the Act of 1875. Sub-sect. (4) provides that the personal representatives of a deceased cautioner may consent or object to registration or a dealing in the same manner as the cautioner.

Application to personal representative.

Section iv.—*Inhibitions.*

L. R. Act, s. 57. "Power for Court or registrar to inhibit registered dealings." [L. T. Act, 1875, s. 57.]

Sub-sects. (1) to (3) of sect. 57 (*d*) of the Act re-enact sect. 57 of the Act of 1875. Sub-sect. (4) provides that the Court or the registrar may, in lieu of an inhibition, order a notice or restriction to be placed on the register.

(*b*) See L. R. Rules, 64 to 70.
(*c*) See *ib.* 215 to 222.
(*d*) See *ib.* 230, 231.

Section v.—*Restrictions.*

L. R. Act, s. 58. "Power to place restrictions on registrar."

Sub-sects. (1) to (3) of sect. 58 (*e*) of the Act re-enact, with some modifications, sects. 58 (*f*), 59 and 83 (3) (*f*) of the Act of 1875. The principal modifications are that sub-sect. (1), which authorises the proprietor to apply for a restriction, (1) applies "where the proprietor of any registered land or charge desires to place restrictions on transferring or charging the land, *or on disposing of or dealing with the land,* or charge *in any manner in which he is by this Act authorised to dispose of or deal with it, or on the deposit by way of security of any certificate,*" the words in italics being new; and (2) provides that no restriction under this section shall extend or apply to dispositions of or dealings with "minor interests" (*g*).

Subs. (4). Rules.

Sub-sect. (4) provides that rules (*h*) may be made to enable applications to be made for the entry of restrictions by persons other than the proprietor.

Section vi.—*Protection of various Interests.*

L. R. Act, ss. 59 to 62. Necessitated by L. C. Act, s. 23.

All the sections (*i*) under this heading are new and are rendered necessary by sect. 23 (*k*) of the Land Charges Act, which, except as regards local land charges (*l*), excludes registered land from the operation of that Act.

L. R. Act, s. 59. Writs, orders, deeds of arrangement, pending actions, &c.

Sect. 59 of the Act is as follows:—

59.—(1) A writ, order, deed of arrangement, pending action, or other interest which in the case of unregistered land may be protected by registration under the Land Charges Act, 1925 (*m*), shall, where the land affected or the charge securing the debt affected is registered, be protected only by lodging a creditor's notice (*n*), a bankruptcy inhibition (*n*) or a caution against dealings with the land or the charge (*o*).

(*e*) See L. R. Rules, 235.
(*f*) As amended by L. T. Act, 1897, Sched. I.
(*g*) See above, Chapter II., p. 472.
(*h*) See L. R. Rules, 236.
(*i*) Sects. 59 to 62.
(*k*) Above, Part VI., Chapter IX., p. 423.
(*l*) *Ib.*, Chapter VII., pp. 418, 419.
(*m*) Above, Part VI.
(*n*) See L. R. Act, s. 61, below, p. 505.
(*o*) *Ib.*, s. 54, above, p. 502.

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(2) Registration of a land charge (other than a local land charge) shall, where the land affected is registered, be effected only by registering under this Act a notice caution or other prescribed entry:

Provided that before a land charge including a local land charge affecting registered land (being a charge to secure money) is realised, it shall be registered and take effect as a registered charge under this Act in the prescribed manner (*n*), without prejudice to the priority conferred by the land charge.

(3) A person interested under a writ or order for enforcing a judgment against registered land or a registered charge, may inspect and make copies of and extracts from the register and documents referred to therein which are in the custody of the registrar, so far as the same relate to the registered land or charge, and may, in accordance with this Act, lodge a caution against dealings therewith (*o*).

(4) When a land charge protected by notice has been discharged as to all or any part of the land comprised therein, the notices relating thereto and to all devolutions of and dealings therewith shall be vacated as to the registered land affected by the discharge.

(5) The foregoing provisions of this section shall apply only to writs and orders, deeds of arrangement, pending actions and land charges which if the land were unregistered would for purposes of protection be required to be registered or re-registered after the commencement of this Act under the Land Charges Act, 1925 (*p*); and for the purposes of this section a land charge does not include a puisne mortgage or an Inland Revenue charge.

(6) Subject to the provisions of this Act relating to fraud (*q*) and to the title of a trustee in bankruptcy (*r*), a purchaser (*s*) acquiring title under a registered disposition (*s*), shall not be concerned with any pending action, writ, order, deed of arrangement, or other document, matter, or claim (not being an overriding interest) which is not protected by a caution or other entry on the register, whether he has or has not notice thereof, express, implied, or constructive.

(7) In this section references to registration under the Land Charges Act, 1925, apply to any registration made under any other statute which, in the case of unregistered land, is by the Land Charges Act, 1925, to have effect as if the registration had been made under that Act (*t*).

Subs. (5). *Puisne* mortgage; Inland Revenue charge.

A puisne mortgage is a land charge of Class C (*u*), and an Inland Revenue charge is a land charge of Class D (*v*). The

(*n*) See L. R. Rules, 155.
(*o*) See L. R. Act, s. 54, above, p. 502.
(*p*) Above, Part VI.
(*q*) See L. R. Act, s. 114, below, Part IX., Section XX.
(*r*) *Ib.*, s. 61 (6), below, p. 506.
(*s*) For the meanings of "purchaser" and "registered disposition," see Table of Definitions, above, Part I., Chapter VII.
(*t*) For "equivalent registration," see Part VI., Chapter II., above, p. 392.
(*u*) Above, Part VI., Chapter VI., p. 407. (*v*) *Ib.*, p. 412.

effect of the concluding words of sub-sect. (5) appears *primâ facie* to be that, notwithstanding sect. 23 of the Land Charges Act (*w*), a puisne mortgage or Inland Revenue charge must be registered under that Act. But, as we have seen (*x*), a registered disposition in favour of a purchaser for money or money's worth operates to vest in him the estate transferred or created free from all claims for death duties. Moreover, sub-sect. (6) appears to be of very wide application, and, if read literally, to be inconsistent with the suggestion above made as to the necessity of registering a puisne mortgage under the Land Charges Act. In the case of registered land, a puisne mortgage appears to stand on the same footing as any other mortgage.

Subs. (6). Protection of purchasers.

Sect. 60 of the Act provides as follows:—

L. R. Act, s. 60.

60.—(1) Where a company, registered under the Companies (Consolidation) Act, 1908, is registered as proprietor of any estate or charge already registered (*y*), the registrar shall not be concerned with any mortgage, charge, debenture, debenture stock, trust deed for securing the same, or other incumbrance created or issued by the company, whether or not registered under that Act, unless the same is registered or protected by caution or otherwise under this Act.

Notice of incumbrances registered under the Companies Act.

(2) No indemnity shall be payable under this Act by reason of a purchaser acquiring any interest under a registered disposition from the company free from any such incumbrance.

Sect. 61 of the Act contains somewhat long and elaborate provisions for the protection of creditors, and includes provisions for the protection of a purchaser in good faith for money or money's worth and for the indemnity, in certain cases, of the trustee in bankruptcy. Incidentally it defines "creditors' notice" (*z*) and "bankruptcy inhibition" (*a*).

L. R. Act, s. 61.

The section is as follows:—

61.—(1) The registrar shall as soon as practicable after registration of a petition in bankruptcy as a pending action under the Land Charges Act, 1925 (*b*), register a notice (in this Act called a creditors' notice) against the title of any proprietor of any registered land or charge which appears to be affected, and such notice shall protect the rights of all creditors, and unless cancelled by the registrar in the prescribed manner such notice shall remain in force until a bankruptcy

Protection of creditors prior to registration of trustee in bankruptcy.

(*w*) *Ib.*, p. 423. (*x*) Above, Chapter II., p. 471.
(*y*) As to unregistered land, see L. C. Act, s. 10 (5), above, Part VI., Chapter VI., p. 417.
(*z*) See L. R. Rules, 179. (*a*) *Ib.* 180.
(*b*) See above, Part VI., Chapter II., p. 392.

inhibition is registered or the trustee in bankruptcy is registered as proprietor (*c*).

No fee shall be charged for the registration of the notice.

(2) Until a creditors' notice is registered, a petition in bankruptcy filed after the commencement of this Act shall not, as respects any registered disposition for money or money's worth of any registered land or charge, be notice or evidence of any act of bankruptcy therein alleged.

(3) The registrar shall, as soon as practicable after registration of a receiving order in bankruptcy under the Land Charges Act, 1925 (*d*), enter an inhibition (in this Act called a bankruptcy inhibition) against the title of any proprietor of any registered land or charge which appears to be affected.

No fee shall be charged for the registration of the inhibition.

(4) From and after the entry of a bankruptcy inhibition (but without prejudice to dealings with or in right of interests or charges having priority over the estate or charge of the bankrupt proprietor), no dealing affecting the registered land or charge of the proprietor, other than the registration of the trustee in bankruptcy, shall be entered on the register until the inhibition is vacated as to the whole or part of the land or charge dealt with.

(5) If and when a proprietor of any registered land or charge is adjudged bankrupt, his registered estate or interest, if belonging to him beneficially, and whether acquired before or after the date of adjudication, shall vest in the trustee in bankruptcy in accordance with the statutory provisions relating to bankruptcy for the time being in force.

(6) Where under a disposition to a purchaser in good faith for money or money's worth such purchaser is registered as proprietor of an estate or a charge, then, notwithstanding that an available act of bankruptcy has been committed by the person making the disposition, the title of his trustee in bankruptcy acquired after the commencement of this Act shall, as from the date of such disposition, be void as against such purchaser unless at the date of such disposition, either a creditors' notice or a bankruptcy inhibition has been registered, but a purchaser who, at the date of the execution of the registered disposition, has notice of an available act of bankruptcy, or of the receiving order, or adjudication, shall not be deemed to take in good faith.

Nothing in this section shall impose on a purchaser a liability to make any search under the Land Charges Act, 1925.

(7) Where the estate or assets of a bankrupt proprietor suffer loss by reason of the omission of the registrar to register a creditors' notice or bankruptcy inhibition, as required by this section, or on account of the execution or registration of a disposition after a petition is registered as a pending action or after a receiving order is registered

(*c*) See L. R. Act, s. 42, above, Chapter IV., p. 496.
(*d*) See above, Part VI., Chapter IV., p. 398.

and before the registration of a creditors' notice or bankruptcy inhibition, the trustee in bankruptcy shall be entitled to indemnity as a person suffering loss by reason of an error or omission in the register.

(8) If neither a creditors' notice nor a bankruptcy inhibition is registered against a bankrupt proprietor, nothing in this section shall prejudicially affect a registered disposition of any registered land or charge acquired by the bankrupt after adjudication which would have been valid by virtue of section forty-seven of the Bankruptcy Act, 1914, if the land or charge had not been registered.

(9) If and when a bankruptcy inhibition is wholly or partially vacated, for any cause other than by reason of the registration of the trustee in bankruptcy, any registered estate or interest vested in the trustee in bankruptcy shall, as respects the registered land or charge to which the vacation extends, be divested and the same shall vest in the proprietor in whom it would have been vested if there had been no adjudication in bankruptcy. 4 & 5 Geo. 5, c. 59.

(10) The official receiver or trustee in bankruptcy may inspect the register so far as it relates to any proprietor against whom a receiving order has been made, and any creditor, on behalf of himself and all other creditors, or the official receiver or trustee in bankruptcy, may lodge a caution against any such proprietor in respect of any minor interest affecting the registered land.

The following rules (*e*) have been made under sect. 62 of the Act:— L. R. Act, s. 62. "Rules to be made as to certain details."

181. Where— Action of the Registrar under Section 62 of the Act (bankruptcy).

(a) any doubt arises as to the identity of the debtor, or

(b) the registration of a pending action in respect of a petition in bankruptcy is vacated, or

(c) the receiving order is rescinded, or

(d) the bankruptcy annulled, or

(e) the bankruptcy proceedings do not affect or have ceased to affect the statutory powers of the bankrupt under the Act,

the Registrar shall, as soon as practicable after receiving notice thereof and after making such inquiry and giving such notices (if any) as he shall deem necessary, take such action in the matter as he shall think advisable.

182. Where a mistake has occurred in a receiving order or where any amendment in the register appears to be required, it shall be the duty of the Official Receiver, as soon as it comes to his knowledge, to notify such mistake or to suggest such amendment to the Registrar, who shall thereupon, after making such inquiries and giving such notices (if any) as he shall deem necessary, make such amendment in the register as may be necessary. Mistake in a receiving order.

(*e*) L. R. Rules, 181, 182.

CHAPTER VI.

LAND AND CHARGE CERTIFICATES.

L. R. Act, Part V., ss. 63 to 68. Mainly re-enactments.

PART V. (*a*) of the Act, which relates to "Land and Charge Certificates," consists mainly of re-enactments of repealed provisions (*b*), and it is necessary to mention here only the following new provisions:—

New provisions.

L. R. Act, s. 64 (4). Issue of new certificate without production of original certificate. [L. T. Act, 1897, s. 8 (4).]

Sub-sect. (4) of sect. 64 extends the cases in which a new land certificate may be issued without production of the former land certificate. The sub-section is as follows:—

(4) [Where a transfer of land is made by the proprietor of a registered charge in exercise of any power vested in him, it may be registered, and a new land certificate may be issued to the purchaser, without production of the former land certificate] (when not deposited at the registry), [but the charge certificate, if any, must be produced or accounted for in accordance with this section.]

The provisions of this subsection shall be extended in the prescribed manner (*c*) to the cases of—

(a) an order for foreclosure absolute;

(b) a proprietor of a charge or a mortgagee obtaining a title to the land under the Limitation Acts;

(c) title being acquired under a title paramount to the registered estate, including a title acquired pursuant to a vesting or other order of the Court or other competent authority.

L. R. Act, s. 65.

Sect. 65 of the Act introduces a convenient change in the practice by enacting as follows:—

Deposit at registry of certificate of mortgaged land.

65. Where a charge or mortgage (otherwise than by deposit) is registered, or is protected by a caution in a specially prescribed form, the land certificate shall be deposited at the registry until the charge or mortgage is cancelled.

(*a*) Sects. 63 to 68. See L. R. Rules, 261 to 271.
(*b*) See the second column of the Table on pp. 463, 465, above.
(*c*) See L. R. Rules, 266.

In connection with this section the following new rule (*d*) has been made:—

Receipt for land certificate produced instead of land certificate.

270.—(1) Where a land certificate is deposited in the Registry pursuant to Section 65 of the Act until the cancellation of the charge or mortgage therein referred to, a special receipt in Form 79 shall be issued to the proprietor.

(2) As a protection against forgery, this receipt shall be produced to the Registrar, instead of the land certificate, on every application to enter a disposition by the proprietor of the land or any transmission thereof.

(3) When deposited pursuant to Section 65 of the Act, the land certificate need not be made to correspond with the register from time to time and a new certificate may be issued in place thereof on the cancellation of the charge or mortgage.

L. R. Act, s. 67 (2). Replacing missing certificate.

By sub-sect. (2) of sect. 67 of the Act a new land certificate or charge certificate may, on the prescribed terms (*e*), be issued in place not only of one lost or destroyed, but also of one in the possession of a person out of the jurisdiction of the High Court, and further, under the new rule (*e*) on the subject, where the production of the former certificate cannot be obtained without undue delay or expense.

(*d*) L. R. Rules, 270. (*e*) *Ib.* 271.

CHAPTER VII.

GENERAL PROVISIONS AS TO REGISTRATION AND THE EFFECT THEREOF.

L. R. Act, Part VI., ss. 69 to 81.

PART VI. of the Act (*a*) contains "General Provisions as to Registration and the Effect thereof," whereof those contained respectively in sects. 69, 70, 73, 75, 78 and 81 have already been referred to (*b*).

Re-enactments. L. R. Act, s. 76. "Description of registered land." *Ib.*, s. 79. "Addresses for service and notices."

Sect. 76 of the Act (*c*) re-enacts, with some modifications, sect. 14 (2) of the Act of 1897; and sect. 79 (*d*) of the Act re-enacts, almost textually (*e*), sects. 89 to 92 of the Act of 1875.

L. R. Act, s. 71. Dispositions by virtue of overriding interests.

Sect. 71 of the Act provides as follows:—

71. Where by virtue of any interest or power which is an overriding interest a mortgagee or other person disposes of any estate, charge, or right in or upon a registered estate, and the disposition is capable of being registered, the registrar shall, if so required, give effect to the disposition on the register.

L. R. Act, s. 72. Appurtenances.

Sect. 72 (*f*) of the Act is as follows:—

72. If before the registration of any freehold or leasehold interest in land with an absolute or good leasehold title any easement, right, or privilege has been acquired for the benefit thereof, then, on such registration, the easement, right, or privilege shall, subject to any entry to the contrary on the register, become appurtenant to the registered land in like manner as if it had been granted to the proprietor who is registered as aforesaid.

(*a*) Sects. 69 to 81.
(*b*) Above, pp. 468, 471, 473, 479.
(*c*) See L. R. Rules, 272 to 285, "Maps and Verbal Descriptions of Land."
(*d*) See *ib.*, 315.
(*e*) Except that in sub-sect. (1) "United Kingdom" (see L. R Act, s. 3 (xxx)) means Great Britain and *Northern* Ireland, and that in sub-sect. (3) "His Majesty's Land Registry" replaces "Office of Land Registry."
(*f*) See L. R. Rules, 251 to 258, "Appurtenances and Easements."

Sect. 74 provides as follows:—

74. Subject to the provisions of this Act as to settled land (*g*), [neither the registrar nor any person dealing with a registered estate or charge shall be affected with notice of a trust express implied or constructive, and references to trusts shall, so far as possible, be excluded from the register.]

L. R. Act, s. 74. Notice of trust not to affect registered dealing. [L. T. Act, 1875, s. 83 (1); L. T. Act, 1897, 1st Sched.]

Sub-sects. (1) and (2) of sect. 77 (*h*) are as follows:—

77.—(1) Where land has been registered with a possessory title before the commencement of this Act, and the registrar is satisfied as to the title, he may register it at any time as absolute or good leasehold, whether the proprietor consents to such registration or not, but, unless the registration is made at the request of the proprietor, without charging any fee therefor.

L. R. Act, s. 77. "Conversion of possessory into absolute or good leasehold title."

(2) Where the registrar is satisfied as to the title he may, on a transfer for valuable consideration of land registered with a qualified, good leasehold or possessory title, enter the title of a transferee or grantee as absolute or good leasehold, as the case may require or admit, whether the transferee or grantee consents or not, but in that case no additional fee shall be charged.

Subs. (1). Possessory title registered before 1926.

Subs. (2). Conversion on sale.

Sub-sect. (3) contains provisions applicable (a) with respect to land registered with a qualified or possessory title, on an application for the registration of a transfer for valuable consideration; and (b) where the land has been registered, if freehold land, for fifteen years, or if leasehold land, for ten years, with a possessory title.

Subs. (3). Land registered with qualified or possessory title.

Sub-sects. (4), (5) and (6) are as follows:—

Subs. (4).

(4) Where the land has been registered with a good leasehold title for at least ten years, the registrar may, subject to the payment of any additional insurance fee and to any advertisements or inquiries which may be prescribed, and if he is satisfied that the proprietor or successive proprietors has or have been in possession during the said period, at the request of the proprietor enter his title as absolute.

Land registered with good leasehold title for ten years.

(5) If any claim adverse to the title of the proprietor has been made an entry shall not be made on the register under this section unless and until the claim has been disposed of.

Subs. (5). Adverse claim.

(6) Any person, other than the proprietor, who suffers loss by reason of any entry on the register made by virtue of this section shall be

Subs. (6). Indemnity.

(*g*) L. R. Act, ss. 86 to 92, below, Chapter VIII.
(*h*) See L. R. Rules, 30.

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entitled to be indemnified under this Act as if a mistake had been made in the register.

Sect. 80 of the Act is as follows:—

L. R. Act, s. 80. [L. T. Act, 1875, s. 105.] *Bona vacantia* and forfeiture.

80. Subject to the express provisions of this Act relating to the effect of first registration of title and the effect of registration of a disposition for valuable consideration (*i*), [nothing in this Act affects any right of His Majesty to any bona vacantia (*k*) or forfeiture.]

(*i*) Above, pp. 477, 485, 486.

(*k*) See A. E. Act, s. 46 (1) (vi), above, Part VII., Chapter V., p. 453.

CHAPTER VIII.

RECTIFICATION OF REGISTER AND INDEMNITY.

ONLY an outline can be given of the provisions of this Part of the Act. — L. R. Act, Part VII., ss. 82 to 85.

Outline.

Sect. 82 of the Act contains six sub-sections. — *Ib.*, s. 82. "Rectification of the register."

Sub-sect. (1) specifies the cases in which, subject to the provisions of this section, the register may be rectified pursuant to an order of the Court, or, subject to an appeal to the Court, by the registrar. They are mostly cases where the entry requiring rectification is due to fraud, mistake or omission, but include the case where all parties interested consent. — Subs. (1). Cases in which register may be rectified.

By sub-sect. (2) the register may be rectified notwithstanding that the rectification may affect any estates, rights, charges, or interests acquired or protected by registration, or by any entry on the register, or otherwise. — Subs. (2). Rectification against registered interests.

Sub-sect. (3) is as follows:— — Subs. (3).

(3) The register shall not be rectified, except for the purpose of giving effect to an overriding interest (*a*), so as to affect the title of the proprietor who is in possession (*b*)— — Protection of proprietor in possession.

(a) unless such proprietor is a party or privy or has caused or substantially contributed, by his act, neglect or default, to the fraud, mistake or omission in consequence of which such rectification is sought; or

(b) unless the immediate disposition to him was void, or the disposition to any person through whom he claims otherwise than for valuable consideration was void; or

(c) unless for any other reason, in any particular case, it is considered that it would be unjust not to rectify the register against him.

(*a*) For "overriding interests," see above, Chapter II.

(*b*) Where a person is in possession of registered land in right of a "minor interest" (see above, *ib.*), he shall, for the purposes of this section, be deemed to be in possession as agent for the proprietor. (Sub-sect. (4).)

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Sect. 83 (*c*) of the Act contains twelve sub-sections:—

L. R. Act, s. 83. "Right to indemnity in certain cases."

Sub-sects. (1) to (4) specify who, subject to the provisions of the Act, are entitled to be indemnified, namely:—

Subss. (1) to (4). Indemnity, when payable.

(1) Any person suffering loss by reason of any rectification of the register.

(2) Where an error or omission has occurred in the register, but the register is not rectified, any person suffering loss by reason of such error or omission.

(3) Any person who suffers loss by reason of the loss or destruction of any document lodged at the registry for inspection or safe custody, or by reason of an error in any official search.

(4) A proprietor of any registered land or charge claiming in good faith under a forged disposition shall, where the register is rectified, be deemed to have suffered loss by reason of such rectification and shall be entitled to be indemnified.

Sub-sects. (5) to (10) are as follows:—

Subs. (5). When not payable.

(5) No indemnity shall be payable under this Act in any of the following cases:—

(a) Where the applicant has himself caused or substantially contributed to the loss by his fraud, or derives title (otherwise than under a disposition for valuable consideration which is registered or protected on the register) from a person so committing fraud;

(b) On account of any mines or minerals or of the existence of any rights to work or get mines or minerals, unless a note is entered on the register that the mines or minerals are included in the registered title;

(c) On account of costs incurred in taking or defending any legal proceedings without the consent of the registrar.

Subs. (6). Amount of indemnity.

(6) Where an indemnity is paid in respect of the loss of an estate or interest in or charge on land the amount so paid shall not exceed—

(a) Where the register is not rectified, the value of the estate, interest or charge at the time when the error or omission which caused the loss was made;

(b) Where the register is rectified, the value (if there had been no rectification) of the estate, interest or charge, immediately before the time of rectification.

(*c*) This section applies to the Crown in like manner as it applies to a private person. (Sub-sect. (12).)

(7) The registrar may, if the applicant desires it, and subject to an appeal to the Court, determine whether a right to indemnity has arisen under this section, and, if so, award indemnity. In the event of an appeal to the Court the applicant shall not be required to pay any costs except his own, even if unsuccessful, unless the Court considers that the appeal is unreasonable.

Subs. (7). Determination of claim. Costs of appeal.

(8) In granting any indemnity the registrar may have regard to any costs and expenses properly incurred in relation to the matter, and may add the same to the amount of the indemnity money which would otherwise be payable.

Subs. (8). Costs of establishing claim.

(9) Where indemnity is paid for a loss, the registrar, on behalf of the Crown, shall be entitled to recover the amount paid from any person who has caused or substantially contributed to the loss by his fraud.

Subss. (9) and (10). Remedies enforceable by registrar.

(10) The registrar shall be entitled to enforce, on behalf of the Crown, any express or implied covenant or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which indemnity has been paid.

Sub-sect. (11) provides that a liability to pay indemnity under the Act shall be deemed a simple contract debt; and, for the purposes of the Limitation Act, 1623 (21 Jac. I. c. 16), the cause of action shall be deemed to arise at the time when the claimant knows, or but for his own default might have known, of the existence of his claim; with a proviso that, when a claim to indemnity arises in consequence of the registration of an estate in land with an absolute or a good leasehold title, the claim shall be enforceable only if made within six years from the date of such registration, except in the four cases mentioned in that sub-section.

Subs. (11). Limitation.

Sect. 84 of the Act provides as follows:—

L. R. Act, s. 84.

84. Where any indemnity is paid in respect of settled land, and not in respect of any particular estate, remainder, or reversion therein, the money shall be paid to the trustees of the settlement and held by them as capital money for the purposes of the Settled Land Act, 1925, arising from the settled land.

Application of indemnity in case of settled land.

Sub-sect. (1) of sect. 85 of the Act provides that any indemnity payable by reason of the rectification or non-rectification of the register shall be paid out of the insurance fund established under the Act of 1897. The rest of the section re-enacts, substantially, the provisions of sect. 21 of the Act of 1897, being the section under which the fund was established.

L. R. Act, s. 85. "Insurance fund for providing indemnity."

CHAPTER IX.

APPLICATION TO PARTICULAR CLASSES OF LAND (*a*).

Section i.—*Settled Land.*

L. R. Act, Part VIII., ss. 86 to 92.

Application of provisions affecting *unregistered* settled land.

THE object of this group of sections appears to be to apply to *registered* settled land some of the main provisions of the Settled Land Act and of the Property Act, and especially of the former, affecting *unregistered* settled land. To appreciate the bearing of these sections certain definitions must be borne in mind.

Definitions.

"Tenant for life."

References in the Registration Act to the "tenant for life" are, where the context admits, to be read as referring to the tenant for life, statutory owner, or personal representative who is entitled to be registered (*b*), and in the same Act, unless the context otherwise requires, "settled land" (*c*), "settlement" (*c*), "tenant for life" (*d*), "statutory owner" (*e*), "trustees of the settlement" (*f*), "capital money" (*g*), "vesting deed" (*h*), "vesting order" (*h*), "vesting assent" (*h*) "vesting instrument" (*h*) (amongst other expressions) have the same meanings as in the Settled Land Act (*i*).

L. R. Act, s. 86.

Subss. (1) to (4).

Registration of settled land.

[L. T. Act, 1897, s. 6 (1).]

Sub-sects. (1) to (4) (*k*) of sect. 86 of the Act are as follows:—

86.—(1) [Settled land] shall [be registered in the name of the tenant for life] or statutory owner.

(2) The successive or other interests created by or arising under a settlement shall (save as regards any legal estate which cannot be

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(*a*) L. R. Act, Part VIII., ss. 86 to 100.
(*b*) *Ib.*, s. 86 (5).
(*c*) Above, Part IV., Chapter II., pp. 258-259.
(*d*) *Ib.*, pp. 262 *et seq.*
(*e*) *Ib.*, Chapter I., pp. 253 *et seq.*
(*f*) *Ib.*, Chapter III., pp. 268 *et seq.*
(*g*) *Ib.*, Chapter VI., pp. 330 *et seq.*
(*h*) *Ib.*, Chapter IV., *passim*, and, in particular, pp. 274, 286 and 300.
(*i*) L. R. Act, s. 3 (xxvi).
(*k*) For sub-sect. (5), see above, note (*b*).

overridden under the powers of the Settled Land Act, 1925, or any other statute (*l*)) take effect as minor interests (*m*) and not otherwise; and effect shall be given thereto by the proprietor of the settled land as provided by statute (*n*) with respect to the estate owner, with such adaptations, if any, as may be prescribed in the case of registered land by rules made under this Act.

(3) [There shall also be entered on the register such restrictions as may be prescribed (*o*), or may be expedient, for the protection of the rights of the persons beneficially interested in the land,] and such restrictions shall (subject to the provisions of this Act relating to releases by the trustees of a settlement (*p*) and to transfers by a tenant for life whose estate has ceased in his lifetime (*q*)) be binding on the proprietor during his life, but shall not restrain or otherwise affect a disposition by his personal representative. [*Ib.* (2).]

(4) [Where land already registered is] acquired with capital money, [the same shall be transferred by a transfer in a specially prescribed form (*r*) to the] tenant for life or statutory owner, and such transfer shall state the names of the persons who are trustees of the settlement for the purposes of the Settled Land Act, 1925, and contain [an application to register the prescribed restrictions applicable to the case;] a transfer made in the specially prescribed form shall be deemed to comply with the requirements of that Act, respecting vesting deeds (*s*); and where no capital money is paid but land already registered is to be made subject to a settlement, it shall not be necessary for the trustees of the settlement to concur in the transfer (*t*). [*Ib.* (3).]

* * * * *

Sub-sect. (1) of sect. 87 of the Act applies to registered settled land the provisions as to personal representatives contained in sects. 6, 7 (1) and 8 of the Settled Land Act (*u*). The sub-section is as follows:— L. R. Act, s. 87. "Changes of ownership of settled land."

87.—(1) [On the death of a proprietor,] or of the survivor of two or more joint proprietors of [settled land (whether the land is settled by his will or by an instrument taking effect on or previously to his death),] his personal representative shall hold the settled land subject to payment or to making provision for payment of all death duties and other liabilities affecting the land, and having priority to the Subs. (1). Assent by personal representative of deceased proprietor. [L. T. Act, 1897, s. 6 (4), (5).]

(*l*) See S. L. Act, s. 72, above, Part IV., Chapter V., pp. 326 *et seq.*
(*m*) Above, Chapter II., p. 472.
(*n*) L. P. Act, s. 3, above, Part III., Chapter IX., p. 193; S. L. Act, s. 16, above, Part IV., Chapter IV., pp. 301 *et seq.*
(*o*) L. R. Rules, 56 to 58, 104.
(*p*) L. R. Act, s. 87 (4), below, p. 519.
(*q*) *Ib.*, s. 87 (6), below, p. 519.
(*r*) L. R. Rules, 101, and Form 24.
(*s*) S. L. Act, s. 5, above, Part IV., Chapter IV., p. 277.
(*t*) L. R. Rules, 99, 100.
(*u*) Above, Part IV., Chapter IV., pp. 283 *et seq.*

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settlement, upon trust to transfer the same by an assent in the prescribed manner to the tenant for life or statutory owner, and in the meantime upon trust to give effect to the minor interests under the settlement; but a transfer shall not be made to an infant.

L. R. Rules, 170.
"Vesting assent."

A special form of "vesting assent," Form 57, is prescribed by rule 170. This form applies, in terms, only where the land is settled by the will of the deceased proprietor, and there does not appear to be any specially prescribed form for the case where the land is settled by an instrument taking effect on or previously to his death. No doubt Form 57 could readily be adapted to this case.

L. R. Act, s. 87 (2).
Rules.

Sub-sect. (2) of sect. 87 provides for the making of rules for the several purposes therein mentioned, and the following rule (*r*) has been made in pursuance of this sub-section:—

Creation of interests affecting settled land in priority to the settlement.

103. Pursuant to subsection (2) of Section 87 of the Act it is hereby provided as follows:—

(i) Where a proprietor or the personal representative of a deceased proprietor has power under a settlement to create a legal estate in priority to the settlement, he may do so by any document sufficient at law to create it.

(ii) The document shall be completed by registration and shall be a registered disposition and shall vest a legal estate in the grantee.

(iii) On production of such a document purporting to be in exercise of such a power executed by such proprietor or personal representative the Registrar shall, without inquiry as to the existence or terms of the power, register notice of the estate created as an incumbrance on the land, and shall inform all persons, appearing by the register to be interested, that he has done so.

(iv) The registration of such a notice shall not confer on the grantee any greater estate or interest, as against the other persons interested under the settlement, than it would have conferred if the land had not been on the register.

L. R. Act, s. 87 (3), (*s*).
Transfer to person

Sub-sects. (3) to (6) of sect. 87 are as follows:—

(3) Where a tenant for life or statutory owner who, if the land were not registered, would be entitled to have the settled land vested in

(*r*) L. R. Rules, 103.
(*s*) This sub-section gives effect to the principle of sub-sects. (2), (3) and (4) of sect. 7 of the S. L. Act, above, Part IV., Chapter IV., p. 284.

him, is not the proprietor, the proprietor shall (notwithstanding any stipulation or provision to the contrary) be bound at the cost of the trust estate to execute such transfers as may be required for giving effect on the register to the rights of such tenant for life or statutory owner.

entitled as tenant for life, &c.

(4) Where the trustees of a settlement have in the prescribed manner (*t*) released (*u*) the land from the minor interests under such settlement, the registrar shall be entitled to assume that the settlement has determined, and the restrictions for protecting the minor interests thereunder shall be cancelled.

Ib. (4). Release by trustees of settlement.

(5) Where an order is made under the Settled Land Act, 1925 (*v*), authorising the trustees of the settlement to exercise the powers on behalf of a tenant for life who is registered as proprietor, they may in his name and on his behalf do all such acts and things under this Act as may be requisite for giving effect on the register to the powers authorised to be exercised in like manner as if they were registered as proprietors of the land, but a copy of the order shall be filed at the registry before any such powers are exercised.

Ib. (5). Trustees of settlement empowered by order.

(6) Where a proprietor ceases in his lifetime to be a tenant for life (*w*), he shall transfer the land to his successor in title, or, if such successor is an infant, to the statutory owner, and on the registration of such successor in title or statutory owner it shall be the duty of the trustees of the settlement, if the same be still subsisting, to apply for such alteration, if any, in the restrictions as may be required for the protection of the minor interests under the settlement.

Ib. (6). Proprietor ceasing to be tenant for life.

Sub-sect. (1) (*y*) of sect. 88 of the Act re-enacts sect. 6 (6) of the Act of 1897 as to filing the settlement, or an abstract or copy thereof, in the registry and as to the effect of such filing as regards purchasers.

L. R. Act, s. 88. "Settlement may be filed in registry" (*x*).

Sect. 89 of the Act is new and provides as follows:—

L. R. Act, s. 89.

89. The registrar may, notwithstanding any restriction entered on the register, grant a certificate that an intended registered disposition is authorised by a settlement or otherwise, and will be registered, and a purchaser who obtains such a certificate shall not be concerned to see that the disposition is authorised, but where capital money is paid to the persons to whom the same is required to be paid by a restriction or into Court no such certificate shall be required.

Registrar's certificate authorising proposed dealing with settled land.

(*t*) See L. R. Rules, 106.
(*u*) See S. L. Act, s. 17, above, Part IV., Chapter IV., p. 304.
(*v*) See *ib.*, s. 24, above, Part IV., Chapter I., p. 255.
(*w*) See *ib.*, s. 105, below, Part IX., Chapter IX.
(*x*) See L. R. Rules, 59.
(*y*) For the meaning of "settlement" in this section, see sub-sect. (2).

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Restriction.

Certificate.

The ordinary form of restriction (*z*) in the case of settled land shows to whom, if not paid into Court, capital money arising under a disposition must be paid as a condition of the registration of the disposition. Accordingly a certificate under sect. 89 will be required only where no capital money arises under the disposition (*a*).

L. R. Act, s. 90.

Charges for money actually raised.

[L. T. Act, 1897, s. 6 (7).]

Sect. 90 of the Act provides as follows:—

90. [The proprietor of settled land which is registered and all other necessary parties, if any, shall, on the request, and at the expense of any person entitled to an estate, interest, or charge conveyed or created for securing money actually raised at the date of such request, charge the land in the prescribed manner (*b*) with the payment of the money so raised,] but so long as the estate, interest or charge is capable of being overridden under the Settled Land Act, 1925 (*c*), or the Law of Property Act, 1925, no charge shall be created or registered under this section.

L. R. Act, s. 91.

Infant entitled in possession, &c.

Sect. 26 (*d*) of the Settled Land Act contains provisions applicable (a) if the settled land is vested in a personal representative, and (b) in every other case, during the minority of an infant who is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute or would if of full age be a tenant for life of or have the powers of a tenant for life over settled land. These provisions are adapted, to some extent, to the case of registered land by paragraphs (1) and (2) of sect. 91 of the Registration Act.

Sect. 91 of the Act is as follows:—

Minorities.

91. The following provisions shall have effect as respects settled land (being registered land) during a minority:—

(1) The personal representatives under the will or intestacy under which the settlement is created or arises shall, during the minority, be registered as proprietors, and in reference to the settled land shall have all the powers conferred by the Settled Land Act, 1925, on a tenant for life and on the

(*z*) See Forms 9 and 10 in the Schedule to the L. R. Rules.

(*a*) Compare sect. 110 (4) of the S. L. Act, above, Part IV., Chapter IX., p. 347.

(*b*) See L. R. Rules, 144, and Form 45.

(*c*) See S. L. Act, s. 21, above, Part IV., Chapter IV., p. 307, and sect. 72, above, *ib.*, Chapter V., p. 326; L. P. Act, s. 2, above, Part III., Chapter XI., p. 203.

(*d*) Above, Part IV., Chapter I., p. 253.

trustees of the settlement; but if and when the personal representatives would, if the infant had been of full age, have been bound to transfer the registered land to him, the personal representatives shall (unless themselves the statutory owners) thenceforth during the minority give effect on the register to the directions of the statutory owner, and shall apply for the registration of any restriction which may be prescribed, but shall not be concerned with the propriety of any registered disposition so directed to be made if the same appears to be a proper disposition under the powers of the statutory owner and the capital money, if any, arising under the disposition is paid to the trustees of the settlement or into Court; but a purchaser dealing with the personal representatives, who complies with the restrictions, if any, which may be entered on the register, shall not be concerned to see or inquire whether any such directions have been given:

(2) If an infant becomes entitled in possession (or will become entitled in possession on attaining full age) to registered land otherwise than on a death, the statutory owners during the minority shall be entitled to require the settled land to be transferred to them and shall be registered as proprietors accordingly (*e*):

(3) If and when the registered land would (if not registered) have become vested in the trustees of the settlement pursuant to the Law of Property Act, 1925 (*f*), such trustees shall (unless they are already registered) be entitled to be registered as proprietors thereof, and shall in the prescribed manner apply for registration accordingly, and no fee shall be charged in respect of such registration or consequential alteration in the register.

Para. (1). Infant entitled on a death.

It will be seen that paragraph (1) of this section applies only where the settlement under which the infant is entitled arises under the will or intestacy of the person whose personal representatives are to be registered as proprietors. It does not, therefore, it seems, apply to a case where settled land, settled previously to the death of a deceased person and not by his will, remains settled land on his death and vests, as such, in his personal representatives under Part I. of the Administration Act (*g*).

Para. (2). Infant entitled other-

Paragraph (2) of the section applies only where the infant's beneficial interest in possession takes effect on some event other

(*e*) See L. R. Rules, 102.
(*f*) See L. P. Act, First Schedule, Part II., paras. 3, 5 and 6 (c), above, Part III., Chapter II., pp. 106 *et seq.*
(*g*) Above, Part VII., Chapter II.

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wise than on a death.

than a death, so that the settled land does not vest in a personal representative. In such a case the trustees of the settlement are the statutory owners (*h*).

L. R. Act, s. 92.

Rights of tenants for life and statutory owners to be registered as proprietors.

Sect. 92 of the Act provides as follows:—

92. The foregoing provisions of this Part of this Act relating to settled land apply in every case where pursuant to the Settled Land Act, 1925 (*i*), settled land is to be vested in a tenant for life or statutory owner whether the estate was registered before or after the commencement of this Act, and the proprietor of settled land (not being the tenant for life or statutory owner entitled to the same) shall be bound to make such dispositions as may be required for giving effect to the rights of the tenant for life or statutory owner:

Provided that, where the registered land is not, at the commencement of this Act, registered in the name of a tenant for life or statutory owner, or personal representative who, if the land were not registered, would by virtue of the Settled Land Act, 1925 (*j*), or of the Law of Property Act, 1925 (*k*), be entitled to have the settled land vested in him, any such person shall (without any transfer) be entitled to be registered as proprietor thereof, and shall in the prescribed manner (*l*) apply for registration accordingly, and no fee shall be charged in respect of such registration or consequential alteration in the register.

L. R. Act, s. 93.

As to persons in a fiduciary position.

[L. T. Act, 1897, s. 6 (9).]

Sect. 93 of the Act is as follows:—

93. [A person in a fiduciary position may apply for, or concur in, or assent to, any registration authorised by the provisions of this] Act, [and, if he is a proprietor, may execute a charge or other disposition in favour of any person whose registration is so authorised.]

Comparison with repealed subsection.

In this section "Act" takes the place of "section" in subsect. (9) of sect. 6 of the Act of 1897, which was the only section in the repealed Acts dealing expressly with settled land. Hence sect. 93 appears to be of general application and not to be limited to registration affecting settled land.

(*h*) See S. L. Act, s. 26, above, Part IV., Chapter I., p. 253.
(*i*) See S. L. Act, ss. 4 (2), 6, 7, Second Schedule, paras. 1 (2), 2 (1); above, Part IV., Chapter IV.
(*j*) See S. L. Act, Second Schedule, *ubi sup.*
(*k*) See L. P. Act, First Schedule, Part II., para. 5, above, Part III., Chapter II., p. 108.
(*l*) See L. R. Rules, 133.

Section ii.—*Land held on trust for sale.*

Sect. 94 of the Act is as follows:— L. R. Act, s. 94.

94.—(1) Where registered land is subject to a trust for sale, express (*m*) or implied (*n*), whether or not there is power to postpone the sale, the land shall be registered in the names of the trustees for sale. Land held on trust for sale.

(2) Where an order, obtained under section seven of the Settled Land Act, 1884, is in force at the commencement of this Act (*o*), the person authorised by the order to exercise any of the powers conferred by the Settled Land Act, 1925, may, in the names and on behalf of the proprietors, do all such acts and things under this Act as may be requisite for giving effect on the register to the powers authorised to be exercised in like manner as if such person were registered as proprietor of the land, and a copy of the order shall be filed at the registry.

(3) Where, by virtue of any statute, registered land is made subject to a trust for sale (*n*), the trustees for sale (unless already registered) shall be registered as proprietors thereof, and shall in the prescribed manner (*p*) apply for registration accordingly, and no fee shall be charged in respect of such registration or consequential alteration of the register, but this subsection has effect subject to the provisions of this Act relating to the registration of the Public Trustee (*q*) and the removal of an undivided share from the register before the title to the entirety of the land is registered (*r*).

Section iii.—*Restriction on number of Trustees.*

Sect. 95 of the Act provides as follows:— L. R. Act, s. 95.

95. The statutory restrictions (*s*) affecting the number of persons entitled to hold land on trust for sale and the number of trustees of a settlement apply to registered land. Restriction on number of trustees.

Section iv.—*Crown and Duchy Land.*

L. R. Act, s. 96.

Sect. 96 of the Act re-enacts sect. 65 of the Act of 1875. "Crown and Duchy land."

(*m*) See above, Part III., Chapter VII.
(*n*) See *ib.*, Chapter V.
(*o*) See L. P. Act, s. 29 (4), above, p. 174.
(*p*) See L. R. Rules, 134.
(*q*) L. R. Act, s. 78 (3).
(*r*) *Ib.*, ss. 78 (2), 81 (1).
(*s*) See T. Act, s. 34, above, Part V., Chapter V., p. 380.

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Section v.—*Foreshore.*

L. R. Act, s. 97. "Foreshore."

Sub-sect. (1) of sect. 97 of the Act re-enacts sect. 66 of the Act of 1875, which latter section is amended by substituting "foreshore" for "land below high-water mark at ordinary spring tides," and by providing that in the case of land within the jurisdiction of the Port of London Authority notice of the application is to be given also to that authority. Sub-sect. (2) of sect. 97 provides that that section does not apply to the registration of an estate with a possessory title or with a good leasehold title (*t*).

Section vi.—*Land subject to Charitable Trusts.*

L. R. Act, s. 98.

Sect. 98 of the Act is as follows:—

Land subject to charitable trusts.

98. Where an application is made to register a legal estate in land subject to charitable trusts and that estate is vested in the official trustee of charity lands, he shall, notwithstanding that the powers of disposition are vested in the managing trustees or committee, be registered as proprietor thereof.

Section vii.—*Land belonging to Benefices.*

L. R. Act, s. 99. "Land belonging to benefices."

Sect. 99 of the Act re-enacts sect. 15 of the Act of 1875.

Section viii.—*Small Holdings.*

L. R. Act, s. 100. "Small holdings."

Sub-sects. (1) and (2) of sect. 100 of the Act re-enact, with some modifications, sect. 19 of the Act of 1897. The principal modification is that references to the Small Holdings and Allotments Act, 1908, are substituted for references to the Small Holdings Act, 1892. Sub-sects. (3) to (5) of sect. 100 are new.

(*t*) This subsection replaces the words "This section shall not apply to registration with a possessory title," which were added to sect. 66 of the L. T. Act, 1875, by the First Schedule to the L. T. Act, 1897.

CHAPTER X.

UNREGISTERED DEALINGS WITH REGISTERED LAND (*a*).

L. R. Act, ss. 101 to 125.

Comparison with previous law.

UNDER the repealed Acts the only "registered" or "statutory" dispositions which the registered proprietor was empowered to make were (1) to transfer and (2) to charge the land, or any part thereof; (3) to impose restrictive conditions as to user; and (4) to create a lien by deposit of the land certificate (*b*); but by sect. 49 of the Act of 1875, *subject to the maintenance of the estate and right of the registered proprietor*, any person, whether the registered proprietor or not, of any registered land having a sufficient "estate or interest" in such land might create estates, rights, interests, and equities in the same manner as he might do if the land were not registered. This power is preserved, with some modifications, by sect. 101 of the Registration Act, which section is as follows:—

L. R. Act, s. 101.

Dispositions off register creating "minor interests."

[L. T. Act, 1875, s. 49.]

101.—(1) [Any person, whether being the proprietor or not, having a sufficient interest] or power [in] or over [registered land, may] dispose of or deal with the same, and [create any interests or rights therein] which are permissible [in like manner] and by the like modes of assurance in all respects [as if the land were not registered,] but subject as provided by this section.

(2) [All interests and rights] disposed of or [created under subsection (1) of this subject (whether by the proprietor or any other person)] shall, subject to the provisions of this section, take effect as minor interests (*c*), and be capable of being overridden by registered dispositions for valuable consideration.

(3) Minor interests shall, subject to the express exceptions contained in this section, take effect only in equity, but [may be protected by entry

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(*a*) L. R. Act, Part IX., ss. 101 to 125. There is a sub-heading to these sections, namely, "Powers of dealing with Registered Land off the Register."

(*b*) See Brickdale and Sheldon's Land Transfer Acts, 2nd ed., pp. 20 to 23, and the notes to sect. 49 of the L. T. Act, 1875, *ib.*, pp. 193 *et seq.*, and, in particular, the statement on p. 193 of the effect of the judgment in *Capital and Counties Bank* v. *Rhodes*, (1903) 1 Ch. 631.

(*c*) Above, Chapter II.

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on the register of such notices, cautions, inhibitions and restrictions as are provided for by this Act] or rules.

(4) A minor interest in registered land subsisting or capable of taking effect at the commencement of this Act, shall not fail or become invalid by reason of the same being converted into an equitable interest (*d*); but after such commencement a minor interest in registered land shall only be capable of being validly created in any case in which an equivalent equitable interest could have been validly created if the land had not been registered (*e*).

(5) Where after the commencement of this Act, the proprietor of the registered estate which is settled, disposes of or deals with his beneficial interest in possession in favour of a purchaser, and accordingly the minor interest disposed of or created would, but for the restrictions imposed by the Law of Property Act, 1925, and this section, on the creation of legal estates, have been a legal estate, the purchaser (subject as provided by the next following section in regard to priorities) may exercise all such rights and remedies as he might have exercised had the minor interest been a legal estate, and the reversion (if any) on any leases or tenancies derived out of the registered estate had been vested in him (*f*).

(6) A minor interest created under this section does not operate to prevent a registered estate passing to the personal representative of a deceased proprietor, or to the survivor or survivors of two or more joint proprietors, nor does this section affect the right of any person entitled to an overriding interest, or having any power to dispose of or create an overriding interest, to dispose of or create the same.

L. R. Act, s. 102.

Sub-sect. (2) of sect. 102 of the Act applies to "minor interests" in registered land the rule in regard to priorities applied to equitable interests in unregistered land by sect. 137 of the Property Act, but substitutes for the notice required by that section the lodging of a priority caution or inhibition. Sect. 102 is as follows:—

Priorities as between minor interests.

102.—(1) If a minor interest subsisting or capable of taking effect at the commencement of this Act, would, if the Law of Property Acts, 1922 and 1925, and this Act had not been passed have taken effect as a legal estate, then (subject and without prejudice to the estate and powers of the proprietor whose estate is affected) the conversion thereof into an equitable interest shall not affect its priority over other minor interests (*g*).

(*d*) See L. P. Act, First Schedule, Part I., above, Part III., Chapter I., p. 99.
(*e*) See L. P. Act, s. 4 (1), above, Part III., Chapter IX., p. 195.
(*f*) See S. L. Act, s. 111, above, Part IV., Chapter X., p. 349.
(*g*) See L. P. Act, First Schedule, Part I., above, Part III., Chapter I., p. 99.

(2) Priorities as regards dealings effected after the commencement of this Act between assignees and incumbrancers of life interests, remainders, reversions and executory interests shall be regulated by the order of the priority cautions or inhibitions lodged (in a specially prescribed form (*h*)) against the proprietor of the registered estate affected, but, save as aforesaid, priorities as between persons interested in minor interests shall not be affected by the lodgment of cautions or inhibitions.

(3) The lodgment of a priority caution or inhibition shall not affect the powers of the proprietor whose estate is affected by the minor interest.

Sub-sect. (2) of this section involves the implication that life interests, remainders, reversions and executory interests are "minor interests" (*i*).

Subs. (2). "Minor interests."

Sub-sect. (1) of sect. 103 relates to "a minor interest in the registered land which would, if registered, be capable of taking effect as a legal estate or charge by way of legal mortgage," and provides that, when such a minor interest is disposed of or created, then—

L. R. Act, s. 103 (1). "Obligation to give effect on the register to certain minor interests."

(i) if the estate owner would, had the land not been registered (*k*), have been bound to give effect thereto by conveying or creating a legal estate or charge by way of legal mortgage, the proprietor shall, subject to proper provision being made for payment of costs, be bound to give legal effect to the transaction by a registered disposition:

(i) By the estate owner.

(ii) if the proprietor is unable or refuses to make the requisite disposition or cannot be found, or if for any other reason a disposition by him cannot be obtained within a reasonable time, or if, had the land not been registered, no conveyance by the estate owner would have been required to give legal effect to the transaction, the registrar shall give effect thereto in the prescribed manner (*l*) in like manner and with the like consequences as if the transaction had been carried out by a registered disposition.

(ii) By the registrar.

The sub-section, however, saves any overriding powers of the proprietor as a tenant for life or trustee for sale and the rights of a personal representative, and imposes no obligation

Savings.

(*h*) See L. R. Rules, 229, and Form 72, and for the "Minor Interests Index," see *ib.*, 11. No "purchaser" is concerned with that Index.

(*i*) And see above, Chapter II.

(*k*) See S. L. Act, s. 16, above, Part IV., Chapter IV., p. 301.

(*l*) See L. R. Rules, 131.

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to make a disposition unless the person requiring the disposition to be made has a right in equity to call for the same.

L. R. Act, s. 104. "Protection of leases granted under statutory powers by persons other than registered proprietor and restriction on power."

Sect. 104 (*m*) of the Act provides, in effect, that all leases at a rent for a term of years absolute authorised by any statutory power may be granted in the name and on behalf of the proprietor by any other person empowered to grant the same and shall be protected by notice and registered in the same cases in like manner and with the same effect as if the lease had been granted by the proprietor, but not so as to authorise any person granting a lease in the name of the proprietor to impose (save in regard to the usual qualified covenant for quiet enjoyment) any personal liability on such proprietor.

L. R. Act, s. 105. "As to minor interests in mortgage debts."

Sect. 105 of the Act authorises rules (*n*) to be made for applying the provisions of this Part of the Act as to minor interests to the case of minor interests in a debt secured by a registered charge.

L. R. Act, s. 106. "Mortgages protected on the register."

Mortgages off the register.

Sect. 106 of the Act contains somewhat long and elaborate provisions in relation to the power thereby conferred on the proprietor of any registered land, subject to any entry to the contrary on the register, to mortgage the same or any part thereof, by deed or otherwise "in any manner which would have been permissible if the land had not been registered and with the like effect," but the land must be so described as to enable the registrar to identify the same without reference to any other document (*o*).

Mortgage, how protected.

Until protected is a minor interest.

A mortgage so made may, if by deed, be protected by a caution in a specially prescribed form (*p*) and in no other way, and if not by deed (*q*), by caution, and, until so protected, shall be capable of taking effect only in equity and of being overridden as a minor interest (*r*).

(*m*) Compare L. P. Act, s. 8 (1), referred to above, Part III., Chapter XV., p. 220.

(*n*) See L. R. Rules, 97.

(*o*) L. R. Act, s. 106, sub-s. (1).

(*p*) See L. R. Rules, 223, and Forms 64 to 68. See also Rules, 224 and 225.

(*q*) No indication is afforded as to how the mortgage may be made otherwise than by deed.

(*r*) L. R. Act, s. 106, sub-ss. (2), (4). The entry of a caution in a specially prescribed form shall be deemed a dealing capable of being restrained by caution. (Sub-sect. 3.)

Where a mortgage by deed has been protected by a caution in the specially prescribed form, it may, on proof of title, be registered as a charge with the same priority as the caution (*s*).

If by deed and specially protected may be registered as a charge.

Sub-sects. (6) and (7) are as follows:—

(6) Where a mortgage by deed has been so registered, the proprietor thereof shall, subject to any entry to the contrary on the register, have all the powers which are by this Act conferred on the proprietor of a registered charge; but so long as the mortgage is protected only by a caution, the mortgagee shall not be capable of dealing with the registered land by a registered disposition.

Effect of registration (*t*), and pending registration.

(7) Any mortgage to which this section applies shall devolve and may be transferred, discharged, surrendered, or otherwise dealt with by the same instruments and in the same manner as if the land had not been registered:

Dealings with mortgages.

Provided that—

(a) Where the mortgage has been registered as a charge, the devolutions, dealings and notification of cessation shall be registered in the same manner and with the same consequences as in the case of a registered charge:

(b) Where the mortgage has been protected only by a caution in a specially prescribed form, then such devolutions and dealings shall be protected in like manner and in no other way:

(c) Subject to any entry to the contrary on the register, the priorities arising in respect of devolutions and dealings shall be regulated by the order of application for registration or for the entry of a caution in the specially prescribed form.

Sub-sect. (9) provides, amongst other things, that rules shall be made for giving effect to the provisions of this section, and, in particular, for adapting the provisions of this section to the case of sub-mortgages (*u*).

Rules.

Sects. 107, 108 and 109 of the Act are as follows:—

L. R. Act, ss. 107 to 109.

107.—(1) Subject to any entry to the contrary on the register, the proprietor of any registered land or charge may enter into any contract

Power for proprietors

(*s*) *Ib.*, sub-sect. (5), and see L. R. Rules, 226. Neither the registrar nor any person interested under a registered disposition is to be affected with notice of any unprotected prior interest or charge which may be disclosed by the mortgage. (Sub-sect. (5).) As to charging an *ad valorem* fee, see sub-sect. (8).

(*t*) See L. R. Rules, 227.

(*u*) See L. R. Rules, 228.

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in reference thereto in like manner as if the land or charge had not been registered, and, subject to any disposition for valuable consideration which may be registered or protected on the register before the contract is completed or protected (*v*) on the register, the contract may be enforced as a minor interest against any succeeding proprietor in like manner and to the same extent as if the land or charge had not been registered.

to bind successors and to enforce contracts.

(2) A contract entered into for the benefit of any registered land or charge may (if the same would have been enforceable by the owner for the time being of the land or charge, if not registered, or by a person deriving title under the party contracting for the benefit) be enforced by the proprietor for the time being of the land or charge.

Acquisition of easements and other benefits.

108. The proprietor of registered land may accept for the benefit thereof the grant of any easement, right, or privilege or the benefit of any restrictive covenant or provision (affecting other land, whether registered or not) in like manner and to the same extent as if he were legally and beneficially entitled to the fee simple in possession, or to the term created by the registered lease, for his own benefit free from incumbrances.

Restriction on exercise of powers off the register.

109. Subject to the express provisions relating to leases (*w*) and mortgages (*x*), nothing in this Part of this Act shall be construed as authorising any disposition of any estate, interest, or right or other dealing with land to be effected under this Part of this Act if the disposition or dealing is one which could be effected under another Part (*y*) of this Act, and any such disposition or dealing shall be effected under and in the manner required by such other Part of this Act, and when so required shall be registered or protected as provided by this Act or the rules.

(*v*) Apparently protection of a contract on the register will have the same effect as registration of an "estate contract" in the case of unregistered land. See L. C. Act, s. 10 (1), Class C (iv), above, Part VI., Chapter VI., p. 407.

(*w*) L. R. Act, ss. 19 (2), 22 (2), above, Chapter IV.

(*x*) *Ib.*, s. 106, above, p. 528.

(*y*) See L. R. Act, Part III., above, Chapter IV.

CHAPTER XI.

THE REGISTRATION ACT, PARTS X. TO XIII.

Outline.

THIS Chapter must be confined to an outline of such of the enactments contained in the remaining Parts of the Act (*a*) as either (1) do not merely re-enact, without substantial modification, enactments contained in the repealed Acts or one of them (*b*); or (2), if effecting substantial alterations in the law, are not dealt with elsewhere in this volume (*c*).

Section i.—*Miscellaneous Enactments* (*d*).

Sect. 111 of the Act provides as follows:—

L. R. Act, s. 111.

Infants, defectives and lunatics.

111.—(1) A purported disposition of any registered land or charge to an infant made after the commencement of this Act, or by the will of a proprietor dying after such commencement, shall not entitle the infant to be registered as proprietor of the registered land or charge until he attains full age, but in the meantime shall operate only as a declaration binding on the proprietor or personal representative that the registered land or charge is to be held on trust to give effect to minor interests in favour of the infant corresponding, as nearly as may be, with the interests which the disposition purports to transfer or create; and the disposition or a copy thereof or extract therefrom shall be deposited at the registry, and shall, unless and until the tenants for life, statutory owners, personal representatives or trustees for sale are registered as proprietors, be protected by means of a restriction or otherwise on the register:

(*a*) Parts X. to XIII., ss. 110 to 148.

(*b*) See the second column of the Table in Chapter I., above, pp. 463 *et seq.*

(*c*) See, for sect. 110 ("Provisions as between vendor and purchaser") and sect. 114, below, Part IX., Section XX.; for sect. 144 ("Power to make general rules"), above, Chapter I., p. 459; for sect. 147 ("Repeals, savings and construction"), above, Part I., Chapter III., p. 13; and for sect. 148 ("Short title, commencement and extent"), above, *ib.*, pp. 7, 8.

(*d*) L. R. Act, Part X., ss. 110 to 119.

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Provided that—

(a) If the disposition is made to the infant jointly with another person of full age, that person shall, during the minority, be entitled to be registered as proprietor, and the infant shall not be registered until he attains full age;

(b) Where the registered land or charge is subject to any trusts or rights of redemption in favour of any person other than the infant, nothing in this section shall affect such trusts or rights of redemption;

(c) Where by reason of the minority or otherwise the land is settled land, the provisions of this Act relating to settled land (*e*) shall apply thereto.

(2) Where an infant becomes entitled under a will or on an intestacy to any registered land or charge, the same shall not be transferred by the personal representative to the infant until he attains full age.

(3) Where an infant becomes entitled to the benefit of a registered charge, the charge shall during the minority be registered in the names of the personal representatives, trustees, or other persons who if the charge had affected unregistered land would have been able to dispose of the same, and they shall for the purposes of this Act have the same powers in reference thereto as the infant would have had if of full age.

(4) A caution may be lodged in the name or on behalf of an infant by his parent, trustee or guardian.

(5) Where a proprietor of any registered land or charge is a lunatic (*f*) or a defective (*f*), the committee (*f*) of his estate or his receiver shall, under an order in lunacy, or of the Court, or under any statutory power, have and may exercise in the name and behalf of the lunatic or defective all the powers which under this Act the lunatic or defective could have exercised if free from disability, and a copy of every such order shall be filed with the registrar and may be referred to on the register.

(6) All the provisions of the Trustee Act, 1925 (*g*), and of the Lunacy Act, 1890, and of any Act amending the same, shall apply to estates and charges registered under this Act, subject to the express provisions of this Act and to the rules made thereunder.

L. R. Act, s. 113.

Sect. 113 of the Act is as follows:—

Office copies to be evidence.

113. Office copies of and extracts from the register and of and from documents and plans filed in the registry shall be admissible in evidence in all actions and matters, and between all persons or parties, to the same extent as the originals would be admissible, but any person

(*e*) L. R. Act, ss. 86 to 92, above, Chapter IX.
(*f*) See Table of Definitions, above, Part I., Chapter VII.
(*g*) Above, Part V.

suffering loss by reason of the inaccuracy of any such copy or extract shall be entitled to be indemnified under this Act, and no solicitor, trustee, personal representative, or other person in a fiduciary position shall be answerable in respect of any loss occasioned by relying on any such copy or extract.

Section ii.—*Compulsory Registration* (*h*).

Sub-sects. (1) and (2) of sect. 120 of the Act are as follows:— L. R. Act, s. 120.

120.—(1) [His Majesty may, by Order in Council, declare, as respects any county or part of a county mentioned or defined in the Order, that, on and after a day specified in the Order, registration of title to land is to be compulsory on sale:] Subs. (1). Power to make orders rendering registration compulsory in certain areas.

[Provided that nothing in this Act] or in any such Order [shall render compulsory the registration of the title to an incorporeal hereditament or to mines and minerals apart from the surface, or to corporeal hereditaments parcel of a manor and included in the sale of a manor as such.] [L. T. Act, 1897, s. 20 (1); L. T. Rules, 1903, r. 68; L. T. Act, 1897, s. 24 (1)].

(2) Any such Order may be made— Subs. (2). Two kinds of order.

(a) at any time at the instance of the county council concerned; and

(b) at any time after the expiration of ten years from the commencement of this Act otherwise than at the instance of a county council;

subject in either case to compliance with the provisions hereinafter contained relating to such Orders respectively:

Provided that any proceedings preliminary to the making of the first Order to be made otherwise than at the instance of a county council may be taken before the expiration of the said period.

It will be seen that the Act contemplates two kinds of Order, namely, one made at the instance of a County Council (*i*) and the other made otherwise than at the instance of a County Council (*k*); that an Order of the former kind may be made at any time, and that an Order of the latter kind can be made at any time after the expiration of ten years from the commencement of the Act.

(*h*) L. R. Act, Part XI., ss. 120 to 125. For the purposes of this Part of the Act, "county" means the administrative county, and includes a county borough, and "county council" includes the council of such a borough. (Sect. 120 (7).)

(*i*) See L. R. Act, s. 121, below.

(*k*) *Ib.*, s. 122, below.

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L. R. Act, s. 121.

Provisions as to Orders made at the instance of a county council.

Sect. 121 of the Act contains the provisions to be complied with where an Order is made at the instance of a County Council. The section is as follows:—

121.—(1) If [at a meeting of a county council, at which at least two-thirds of the members of the council are present, a resolution is passed signifying the desire of the county council that registration of title should be compulsorily applied to the county over which the council has jurisdiction,] or any part thereof, such an Order in Council as aforesaid may be made as respects that county or any part to which the resolution extends, and is in this Part of the Act referred to as an Order made at the instance of a county council.

[L. T. Act, 1897, s. 20 (8)].

[*Ib.* (9)].

(2) [Every such Order shall within thirty days from the date thereof, if Parliament be then sitting, or within twenty days from the commencement of the next session if Parliament be not sitting, be laid on the table of both Houses of Parliament, and if within forty days of any Order being so laid an Address in either House disapproving of the Order be carried, the Order shall be void and of no effect.]

L. R. Act, s. 122.

"Provisions as to Orders made otherwise than at the instance of a county council."

Sect. 122 of the Act contains thirteen paragraphs which prescribe the procedure to be adopted where an Order is proposed to be made otherwise than at the instance of a County Council.

Outline of procedure.

The procedure, which is under the direction of the Lord Chancellor, is shortly as follows:—Notice of the Order proposed to be made shall not less than six months before the Order is made and not more than eighteen months before the date on which it is to take effect be given to the Council of the county to which the Order is proposed to be applied. A draft of the proposed Order, together with the name of at least one place within or conveniently near to the county where a district registry office is proposed to be established, shall accompany the notice, and shall also be published in the *London Gazette* (*l*). The Council within ten days of the receipt of the notice shall furnish a copy thereof to any law society whose district will be affected by the proposed Order (*m*). The Council and any such law society, or either of them, may within six months after the receipt of the notice pass a resolution that a public inquiry shall be held in the county as to the desirability of extending compulsory registration of title on sale to the county or part of the county intended to be affected (*n*). A copy of the reso-

(*l*) Para. (i). Compare L. T. Act, 1897, s. 20 (5).
(*m*) Para. (ii).
(*n*) Para. (iii).

lution shall be sent to the Lord Chancellor, who, on the receipt thereof, shall, after consultation with the Law Society, appoint a person, being a practising member of the legal profession, to hold the inquiry with all necessary directions in that behalf and with power to make rules (*o*). At the inquiry the Council and other authorised or interested parties shall be entitled to submit reasons for or against the proposed extension of compulsory registration (*p*). The person holding the inquiry shall report in writing to the Lord Chancellor the result thereof, and the Lord Chancellor shall cause the report to be published in the *London Gazette* or otherwise (*q*). If, *after the publication of the report, or after the period within which a resolution that an inquiry be held may be passed has expired without any such resolution being passed,* the Lord Chancellor decides to proceed with the draft Order, with or without amendment, he shall cause such draft to be laid upon the table of each House of Parliament (*r*). If both Houses by resolution approve the draft, either without modification or with modifications to which both Houses agree, the Order may be made in the form in which the draft has been approved (*s*).

L. R. Act, s. 123.

Sect. 123 of the Act considerably modifies the law as to what is to be the effect, as regards the legal estate, of non-registration in an area in which registration has been made compulsory. The section provides as follows:—

Effect of Act in areas where registration is compulsory. [L. T. Act, 1897, s. 20 (1); L. T. Rules, 1903, r. 69].

123.—(1) [In any area in which an Order in Council declaring that registration of title to land within that area is to be compulsory on sale is for the time being in force, every conveyance on sale of freehold land and every grant of a term of years] absolute [not being less than forty years] from the date of the delivery of the grant, [and every assignment on sale of leasehold land held for a term of years] absolute [having not less than forty years to run] from the date of delivery of the assignment, [shall] (save as hereinafter provided), on the expiration of two months from the date thereof or of any authorised extension of that period, become [void so far as regards the grant or conveyance of the legal estate in the freehold or leasehold land

(*o*) Paras. (iv) to (vi).
(*p*) Para. (vii).
(*q*) Para. (viii).
(*r*) Para. (ix).
(*s*) Para. (x). Not more than one such Order is to be made within the period of eleven years from the commencement of the Act (para. (xi)); and the first Order shall not affect more than one county with any county borough surrounded by or contiguous to such county. (Para. (xii).)

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comprised in the conveyance, grant, or assignment, or so much of such land as is situated within the area affected, unless the grantee] (that is to say, the person who is entitled to be registered as proprietor of the freehold or leasehold land) or his successor in title or assign has in the meantime applied to be [registered as proprietor of such land:]

"Grantee" to be registered within two months or extended period.

Power to extend period.

Provided that the registrar, or the Court on appeal from the registrar, may, on the application of any persons interested in any particular case in which the registrar or the Court is satisfied that the application for first registration cannot be made within the said period, or can only be made within that period by incurring unreasonable expense, or that the application has not been made within the said period by reason of some accident or other sufficient cause, make an order extending the said period; and if such order be made, then, upon the registration of the grantee or his successor or assign, a note of the order shall be endorsed on the conveyance, grant or assignment:

Where registration compulsory at commencement of Act.

In the case of land in an area where, at the date of the commencement of this Act, registration of title is already compulsory on sale, this subsection shall apply to every such conveyance, grant, or assignment, executed on or after that date.

Rules.

(2) Rules (*t*) under this Act may provide for applying the provisions thereof to dealings with the land which may take place between the date of such conveyance, grant, or assignment and the date of application to register as if such dealings had taken place after the date of first registration, and for registration to be effected as of the date of the application to register.

Interpretation.

[L. T. Act, 1897, s. 20 (2); L. T. Rules, 1903, r. 70].

(3) [In this section the expressions "conveyance on sale" and "assignment on sale" mean an instrument made on sale by virtue whereof there is conferred or completed a title under which an application for registration as first proprietor of land may be made under this Act,] and include a conveyance or assignment by way of exchange where money is paid for equality of exchange, but do not include an enfranchisement or extinguishment of manorial incidents, whether under the Law of Property Act, 1922, or otherwise, [or an assignment or surrender of a lease to the owner of the immediate reversion containing a declaration that the term is to merge in such reversion.]

[L. T. Rules, 1908, IV.]

L. R. Act, ss. 124, 125.

Sects. 124 and 125 of the Act are as follows:—

Compulsory provisions bind the Crown.

124. This Part of this Act, as respects transactions completed after the commencement of this Act, binds the Crown.

Special provisions as to orders affecting Ridings of Yorkshire.

125. Where an order is made under this Part of this Act which applies to any of the Ridings of Yorkshire the order may provide for the transfer to the Land Registry of the business of the local deed registry established for the Riding, or for the local deed registry being constituted a district registry under this Act, and for such district registry being administered by the county council, or, with the consent

(*t*) See L. R. Rules, 73.

of the county council, may contain such other provisions as appear expedient with respect to the local deed registry; and the order may contain such supplemental, incidental, and consequential provisions (including provisions for the modification of the enactments relating to the constitution and administration of the local deed registry, and for the payment of compensation to the county council of the Riding in respect of future loss of fees or otherwise, and to the officers of the registry) as appear necessary or expedient for the purposes of the order.

Section iii.—*Administrative and Judicial Provisions* (*u*).

Sects. 129 and 130 of the Act provide as follows:—

L. R. Act, ss. 129, 130.

129. The Commissioners of Inland Revenue and other Government Departments, and local authorities, may furnish to the registrar on his request such particulars and information in regard to land and charges, and the registrar may in like manner furnish to the Commissioners of Inland Revenue, other Government Departments, and local authorities on their request such particulars and information as they are respectively by law entitled to require owners of property to furnish to them direct.

Interchange of information between Land Registry and other Departments.

130. When any document is delivered or returned by the registrar to any person he may, at the cost of the registry, require such person to give a statutory acknowledgment of the right of the registrar and his successors in office to production of such document and to delivery of copies thereof, and may endorse notice of such right on the document, and the acknowledgment shall not be liable to stamp duty.

Statutory acknowledgments on return of documents.

Section iv.—*Rules, Fee Orders, &c.* (*v*).

Sub-sects. (2), (3) and (5) of sect. 145 of the Act provide as follows:—

L. R. Act, s. 145.

"Power to make Fee Orders," &c.

(2) Where the personal representatives of a deceased person are registered as proprietors of the registered land on his death, a fee shall not be chargeable for registering any disposition of the land by them unless the disposition is for valuable consideration.

Subs. (2).

Dispositions by personal representatives.

(3) Specially reduced fees may be authorised to be charged on the registration of title to land wholly acquired for the purpose of being used as a street, or for street widening or improvements, or when acquired by a Government Department, a local authority, or other

Subs. (3).

Specially reduced fees in certain cases.

(*u*) L. R. Act, Part XII., ss. 126 to 143.
(*v*) *Ib.*, Part XIII., ss. 144 to 148.

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statutory body for permanent objects not involving a resale or other disposition.

* * * * *

Subs. (5). Cost of new offices.

(5) The Lord Chancellor may, with the consent of the Treasury, by order, from time to time provide for the manner in which the money advanced for the acquisition of the site and the erection of new offices at the registry (so far as not already provided for by the existing sinking fund) shall be repaid, secured, or otherwise provided for; and also for the manner in which accounts of receipts and expenditure as between the several departments of the land registry are to be kept.

L. R. Act, s. 146.

Sect. 146 of the Act provides as follows:—

Orders as to remuneration of solicitors.

146.—(1) The remuneration of solicitors in conveyancing and other non-contentious business under this Act shall from time to time be prescribed and regulated by general orders (*w*) made by the Committee in England constituted under section two of the Solicitors' Remuneration Act, 1881; provided that the Chief Land Registrar shall, for the purposes aforesaid, be an additional member of that committee.

44 & 45 Vict. c. 44.

(2) The provisions of the last-mentioned Act apply to any general order made under this section.

(*w*) See the Solicitors' Remuneration (Registered Land) Order, 1925, dated the 18th December, 1925; W. N. 1926, Part II., p. 39.

APPENDIX TO THE CONSOLIDATION ACTS.

THE LAW OF PROPERTY (AMENDMENT) ACT, 1926.

THIS Appendix contains the text, with some notes thereon, of the Law of Property (Amendment) Act, 1926.

This Act was passed on the 16th June, 1926, and amends, partly by sections of the Act itself and partly by scheduled amendments, various provisions of the Law of Property Act, 1922, the Settled Land Act, the Property Act, the Trustee Act, the Land Charges Act, the Registration Act, and the Universities and College Estates Act, 1925.

It also extends, for the purposes of certain Acts, the definition of "trust corporation."

The Act is to be construed as one with any Act which it amends, and, except sects. 4 and 5, is to be deemed to have come into operation on the 1st January, 1926.

This Act is in the body of the following notes referred to as "the Amending Act," and in the marginal and footnotes thereto as the "L. P. Act, 1926."

LAW OF PROPERTY (AMENDMENT) ACT, 1926.

[16 & 17 Geo. 5. c. 11.]

ARRANGEMENT OF SECTIONS.

Section.
1. Conveyances of legal estates subject to certain interests.
2. Amendment of 15 Geo. 5. c. 20. s. 140 in its application to agricultural holdings.
3. Meaning of "trust corporation."
4. Date of effective registration and priority notices.
5. Priority of charges for securing further advances.
6. Amendment of 15 Geo. 5. c. 18. s. 13.
7. Minor amendments.
8. Short title, construction and commencement.
SCHEDULE.

Appendix.

An Act to amend certain enactments relating to the Law of Property and Trustees.

[16th June 1926.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Conveyances of legal estates subject to certain interests.

15 Geo. 5. c. 18.

1.—(1) Nothing in the Settled Land Act, 1925, shall prevent a person on whom the powers of a tenant for life are conferred by paragraph (ix) of subsection (1) of section twenty of that Act from conveying or creating a legal estate subject to a prior interest as if the land had not been settled land.

(2) In any of the following cases, namely—

(a) where a legal estate has been conveyed or created under subsection one of this section, or under section sixteen of the Settled Land Act, 1925, subject to any prior interest, or

(b) where before the first day of January, nineteen hundred and twenty-six, land has been conveyed to a purchaser for money or money's worth subject to any prior interest whether or not on the purchase the land was expressed to be exonerated from, or the grantor agreed to indemnify the purchaser against, such prior interest,

the estate owner for the time being of the land subject to such prior interest may, notwithstanding any provision contained in the Settled Land Act, 1925, but without prejudice to any power whereby such prior interest is capable of being overreached, convey or create a legal estate subject to such prior interest as if the instrument creating the prior interest was not an instrument or one of the instruments constituting a settlement of the land.

(3) In this section "interest" means an estate, interest, charge or power of charging, subsisting, or capable of arising or of being exercised, under a settlement, and, where a prior interest arises under the exercise of a power, "instrument" includes both the instrument conferring the power and the instrument exercising it.

L. P. Act, 1926, s. 1. Subs. (1). "Tenant for life." S. L. Act, s. 20 (1) (ix).

Sub-sect. (1) of sect. 20 of the Settled Land Act (*a*) specifies in ten paragraphs a number of persons each of whom "being of full age shall, when his estate or interest is in possession," have the powers of a tenant for life under that Act.

Paragraph (ix) is as follows:—

(ix) A person beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates, interests, charges, or powers of charging, subsisting or capable of being exercised under a settlement;

(*a*) Above, Part IV., Chapter II., p. 263.

Subs. (3). "Interest."

It will have been seen that the definition of "interest" in sub-sect. (3) of sect. 1 of the Amending Act as meaning "an estate, interest, charge, or power of charging, subsisting, or capable of arising or of being exercised, under a settlement," follows closely the language of paragraph (ix) above set out. Such an interest can only take effect as an "equitable interest" (*b*).

Is an *equitable* interest. Subs. (1). Absolute owner subject to an "interest."

The person, then, who is contemplated by sub-sect. (1), is an owner of a legal estate in land who, but for the existence of an "interest," as so defined, would have been an *absolute* owner. Such an owner could at any time before the commencement of the Settled Land Act have conveyed his legal estate or created thereout a fresh legal estate subject to the "interest," but on that Act coming into operation, though clothed with the powers, he became subject to the disabilities, of a "tenant for life" (*c*) and could not convey or create a legal estate until, by the execution of a vesting deed by the trustees of "the settlement" (*d*), he should have placed himself in a position to convey or create a legal estate *discharged* from the "interest" (*e*).

Disabilities imposed by S. L. Act.

Disabilities removed by L. P. Act, 1926, s. 1 (1).

These disabilities are removed by sub-sect. (1), which provides, in effect, that an owner who, subject only to a prior "interest" is an absolute owner, may convey or create a "legal estate" (*f*), *subject* to such "interest," as if the land were not "settled land" (*g*).

Validation of past transactions.

As sub-sect. (1) is to be deemed to have come into operation on the 1st January, 1926 (*h*), it will, it is thought, operate to validate any transaction, effected on or after that date and before the commencement (*i*) of the Amending Act, whereby such an owner should have purported to convey or create a legal estate subject to the "interest" affecting the same.

(*b*) Above, Part III., Chapter I.
(*c*) See Table of Definitions, above, Part I., Chapter VII.; and above, Part IV., Chapter II., pp. 261, 262.
(*d*) Which might be a "compound settlement"; see above, Part IV., Chapter II., pp. 260, 261.
(*e*) See above, Part IV., Chapter IV., p. 274; Chapter V., p. 328.
(*f*) See Table of Definitions, above, Part I., Chapter VII.
(*g*) See above, Part IV., Chapter II.
(*h*) L. P. Act, 1926, s. 8 (2).
(*i*) The 16th June, 1926.

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Limits of application of subs. (1).

It is thought that sub-sect. (1) is confined strictly to the specific case therein mentioned and affords no relief or assistance to a person who is, or has the powers of, a tenant for life *otherwise* than under paragraph (ix) of sub-sect. (1) of sect. 20 of the Settled Land Act.

L. P. Act, 1926, s. 1, subs. (2).

Option to convey subject to or free from "interest."

The effect of sub-sect. (2) is to give to any "estate owner" (*k*) who, in any of the cases therein mentioned, holds land subject to a "prior interest" the option to convey or create a "legal estate" (*k*) either subject to such prior interest or, by adopting the requisite means for that purpose, discharged therefrom.

"Settlement."

"Instrument."

Under, and for the purposes of, the Settled Land Act there can be only one settlement, consisting of the instrument, if only one, or any and every instrument, if more than one, under which any limitation, charge, or power of charging affecting the land in question subsists or is capable of arising (*l*). For the purpose of enabling an estate owner to convey or create a legal estate *subject* to a prior interest, under the power conferred by sub-sect. (2), the "instrument" creating the prior interest is to be treated as if it were not an instrument or one of the instruments constituting the settlement; and, by sub-sect. (3), where the prior interest arises under the exercise of a power, "instrument" includes both the instrument conferring the power and the instrument exercising it.

Cases to which subs. (2) applies.

(i) Conveyance under subs. (1).

(ii) Conveyance under S. L. Act, s. 16.

(iii) Conveyance before 1926 to purchaser.

Sub-sect. (2) applies to three cases, namely, where the legal estate vested in the estate owner subject to a prior interest is derived under a conveyance or grant, subject to that interest, to him or to his predecessor in title effected (i) under sub-sect. (1) of sect. 1 of the Amending Act (*m*), (ii) under sect. 16 of the Settled Land Act, or (iii) before the 1st January, 1926, to a purchaser for money or money's worth (*n*). Of these, only case (ii) calls for any observations.

S. L. Act, s. 16.

Sect. 16 of the Settled Land Act prescribes certain cases in which it is the duty of the estate owner of settled land (that is,

(*k*) See Table of Definitions, above, Part I., Chapter VII.
(*l*) See above, Part IV., Chapter II., pp. 260 *et seq.*
(*m*) Above, p. 540.
(*n*) Above, Part IV., Chapter II., p. 261.

the tenant for life, statutory owner, or personal representative in whom the legal estate which is the subject of the settlement is vested) to convey or create a legal estate.

Sub-sect. (2) of sect. (1) of the Amending Act only applies to a legal estate conveyed or created under that section (*o*) *subject to a prior interest*, namely, under paragraph (iii) (*p*) of sub-sect. (1) of that section (*o*). As we have seen (*q*), any legal estate or charge by way of legal mortgage created under that paragraph shall take effect *and be expressed to take effect* subject to any prior equitable charges or powers of charging subsisting under the settlement, unless the persons entitled to such prior charges or to exercise such prior powers consent to the same being postponed.

Ib. (1) (iii).

Amendment of 15 Geo. 5. c. 20. s. 140, in its application to agricultural holdings.

13 & 14 Geo. 5. c. 9.

2. Section one hundred and forty of the Law of Property Act, 1925 (which relates to the apportionment of conditions on severance), shall have effect as if at the end of subsection (2) thereof the following proviso were inserted:—

> "Provided that where the land demised is an agricultural holding within the meaning of the Agricultural Holdings Act, 1923, the tenant on whom notice to quit is served by the person entitled to a severed part of the reversion may at any time within twenty-eight days of the service of such notice to quit, serve on the persons severally entitled to the severed parts of the reversion a notice in writing to the effect that he accepts the notice to quit as a notice to quit the entire holding given by the persons so severally entitled to take effect at the same time as the original notice; and such acceptance shall have effect as if it were the acceptance of a notice to quit to which paragraph (d) of subsection (7) of section twelve of the said Act applies."

L. P. Act, s. 140.

Sub-sect. (1) of sect. 140 of the Property Act re-enacts sub-sect. (1) of sect. 12 of the Conveyancing Act, 1881 (*r*). Sub-sect. (2) of sect. 140 is new and will be found set out on p. 233 of this volume.

Meaning of "trust corporation."

15 Geo. 5. c. 19.

3.—(1) For the purposes of the Law of Property Act, 1925, the Settled Land Act, 1925, the Trustee Act, 1925, the Administration of Estates Act, 1925, and the Supreme Court of Judicature (Consolidation) Act, 1925, the expression "Trust Corporation" includes the

(*o*) Namely, S. L. Act, s. 16.
(*p*) The effect of para. (iii) is set out above, Part IV., Chapter IV., p. 302.
(*q*) Above, *ib.*
(*r*) See the Table, above, p. 232.

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15 Geo. 5. c. 23.

15 & 16 Geo. 5. c. 49.

Treasury Solicitor, the Official Solicitor and any person holding any other official position prescribed by the Lord Chancellor, and, in relation to the property of a bankrupt and property subject to a deed of arrangement, includes the trustee in bankruptcy and the trustee under the deed respectively, and, in relation to charitable ecclesiastical and public trusts, also includes any local or public authority so prescribed, and any other corporation constituted under the laws of the United Kingdom or any part thereof which satisfies the Lord Chancellor that it undertakes the administration of any such trusts without remuneration; or that by its constitution it is required to apply the whole of its net income after payment of outgoings for charitable, ecclesiastical or public purposes, and is prohibited from distributing, directly or indirectly, any part thereof by way of profits amongst any of its members, and is authorised by him to act in relation to such trusts as a trust corporation.

(2) For the purposes of this provision, the expression "Treasury Solicitor" means the solicitor for the affairs of His Majesty's Treasury, and includes the solicitor for the affairs of the Duchy of Lancaster.

Trustee under deed of arrangement.

The question has already been considered (*s*) whether a sole trustee (not being a trust corporation) of a deed of arrangement selling under a trust for sale contained in the deed could give a valid receipt for the purchase-money, notwithstanding sect. 14 (2) of the Trustee Act. Sub-sect. (1) of sect. 3 of the Amending Act, which section is retrospective to the 1st January, 1926 (*t*), removes all doubt on the question by giving to such a trustee the status of a trust corporation.

Date of effective registration and priority notices.

15 Geo. 5. c. 22.

4.—(1) Any person intending to make an application for the registration of any contemplated charge, instrument, or other matter in pursuance of the Land Charges Act, 1925 (*u*), or any rule made thereunder (*u*), may give a priority notice in the prescribed form at least two days before the registration is to take effect, and where such a notice is given—

(a) the notice shall be entered in the register to which the intended application when made will relate;

(b) if the application is presented within fourteen days thereafter and refers in the prescribed manner to the notice, the registration shall take effect as if the registration had been made at the time when the charge, instrument, or matter was created, entered into, made, or arose, and the date at which the registration so takes effect shall be deemed to be the date of registration; and where any two charges, instruments, or matters are contemporaneous, and one (whether or not pro-

(*s*) Above, Part V., Chapter IV., p. 362.
(*t*) L. P. Act, 1926, s. 8 (2).
(*u*) Above, Part VI.

tected by a priority notice) is subject to or dependent on the other which is protected by a priority notice, the subsequent or dependent charge, instrument, or matter shall be deemed to have been created, entered into, or made, or to have arisen after the registration of the other.

(2) Where a purchaser has obtained an official certificate of the result of search (*v*), any entry which is made in the register after the date of the certificate and before the completion of the purchase, and is not made pursuant to a priority notice entered on the register before the certificate is issued, shall not, if the purchase is completed before the expiration of the second day after the date of the certificate, affect the purchaser.

(3) In reckoning the number of days under this section, Sundays and other days when the registry is not open to the public shall be excluded.

(4) Rules may be made under the said Act—

(a) for determining the date on which applications and notices shall be treated for the purposes of this section as having been made or given;

(b) for determining the times and order at and in which applications and priority notices are to be registered;

(c) for varying the number of days fixed by this section;

(d) for adapting the provisions of this section to local land charges.

(5) Where rules are made varying the number of days fixed by this section, this section shall have effect as if the number so varied were substituted for the number specified in this section.

Commencement of s. 4.

Sect. 4 of the Amending Act came into operation on the 16th June, 1926, the date of the passing of the Act (*w*).

Effect of s. 4.

The effect of the section is that, if the prescribed conditions as to giving a priority notice and subsequent application for registration are complied with, the registration will be deemed to have been made "at the time when the charge, instrument or matter was created, entered into, made or arose, and the date at which the registration so takes effect shall be deemed to be the date of registration" (*x*).

Example. "Restrictive covenants."

For example, in such a case, the registration of a conveyance on sale of a legal estate subject to restrictive covenants entered into by the purchaser will be deemed to have been made at the time of the execution of the conveyance, and the

(*v*) See above, Part VI., Chapter VIII., p. 420.
(*w*) See sect. 8 (2).
(*x*) Sect. 4 (1) (b).

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purchaser will be unable to resell the land to a purchaser for money or money's worth free from the restrictive covenants by completing the resale before the restrictive covenants have been, or are deemed to have been, registered under the Land Charges Act (*y*).

Subs. (4). Rules.

Sub-sect. (4) of sect. 4 enacts that rules may be made under "the said Act," that is, the Land Charges Act (*z*).

Priority of charges for securing further advances. 15 Geo. 5. c. 21.

5. The following subsection shall be inserted at the end of section thirty (*a*) of the Land Registration Act, 1925, namely:—

"(3) Where the proprietor of a charge is under an obligation, noted on the register, to make a further advance, a subsequent registered charge shall take effect subject to any further advance made pursuant to the obligation."

Amendment of 15 Geo. 5. c. 18, s. 13.

6. Section thirteen (*b*) of the Settled Land Act, 1925 (which relates to dispositions not taking effect until a vesting instrument is made), shall have effect as if at the end thereof the following proviso were inserted:—

"Nothing in this section affects the creation or transfer of a legal estate by virtue of an order of the Court or the Minister or other competent authority."

Minor amendments.

7. The amendments specified in the second column of the Schedule to this Act, being amendments of a minor nature, shall be made in the enactments mentioned in the first column of that Schedule and shall have effect without prejudice to any title acquired by a purchaser, or any registration effected, before the passing of this Act.

Effect of s. 7.

The effect of this section, read in conjunction with sect. 8 (2), appears to be that these amendments take effect as on and from the 1st January, 1926, but without prejudice to any title acquired by a purchaser, or any registration effected, before the passing of the Amending Act.

Registration.

It is not clear whether "registration" means registration under the Land Charges Act or registration under the Registration Act. Probably it includes both.

Short title, construction and commencement.

8.—(1) This Act may be cited as the Law of Property (Amendment) Act, 1926, and so far as it amends any Act shall be construed as one with that Act.

(*y*) See L. C. Act, ss. 10 (1) D (ii), 13 (2), above, Part VI., Chapter VI., pp. 406, 412.

(*z*) See Land Charges Rules, 1926, St. R. & O., 1926, No. 737/L. 20.

(*a*) See above, Part VIII., p. 489.

(*b*) See above, Part IV., Chapter IV., p. 274, where this section is set out.

(2) The provisions of this Act except sections four and five shall be deemed to have come into operation on the first day of January, nineteen hundred and twenty-six. Appendix.

SCHEDULE.

MINOR AMENDMENTS (*z*).

Enactments to be Amended and Amendments.

LAW OF PROPERTY ACT, 1922.

Sect. 43.—In subsection (8), for the words "shall be treated as purchase money," there shall be substituted the words "shall be treated as interest upon purchase money."

Sect. 43 of the Law of Property Act, 1922, is repealed by the Settled Land Act (*a*), except so far as it relates to glebes.

Schedule XIII., Part II.—At the end of paragraph 13 the following words shall be inserted:—

"For the purposes of this paragraph the right of a tenant to demise or otherwise deal with land without the licence of the lord shall not be deemed to be restricted by reason only that by custom or otherwise the transaction has to be effected by surrender and admittance, or by customary assurance, or in any other particular manner, and customary payments have to be made in respect of the transaction."

Part II. of the Thirteenth Schedule to the Law of Property Act, 1922, deals with the "Scale of Compensation for extinguishment of Manorial Incidents" (*b*).

SETTLED LAND ACT, 1925.

Sect. 1.—At the end, there shall be inserted the following subsection:—

"(7) This section does not apply to land held upon trust for sale."

This amendment, though described in sect. 7 of the Amending Act as an amendment of a minor nature, is of considerable importance. Sect. 1 of the Settled Land Act is the section S. L. Act, s. 1.

(*z*) For clearness the amendments are distinguished by a marginal line.

(*a*) S. L. Act, s. 119, and Fifth Schedule.

(*b*) See above, Part II., Chapter III.

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which defines "What constitutes a settlement," and is set out in Chapter II. of Part IV. of this volume on pp. 258 and 259.

Effect of amendment.

Affects definition of "settlement" and of "settled land" in S. L. Act and in other Acts.

The effect of the insertion of the new sub-sect. (7) is that a "settlement" of land on trust for sale is not an instrument which "creates or is for the purposes of this Act a settlement and is in this Act referred to as a settlement, or as the settlement, as the case requires" (*c*), and that land held upon trust for sale is not "settled land" (*d*). Moreover, the new sub-section affects not only the definitions of "settlement" and "settled land" in the Settled Land Act, but also the referential definitions of the same expressions in other Acts (*e*).

Sect. 3.—In this section after the word "land," where it first occurs, there shall be inserted the words "not held upon trust for sale."

S. L. Act, s. 3.

This amendment of sect. 3 (*f*) is consequential on the above amendment of sect. 1.

Sect. 13.—For the words "without notice of any settlement," there shall be substituted the words "without notice of such tenant for life or statutory owner having become so entitled as aforesaid."

S. L. Act, s. 13

In this amendment the words "having become so entitled as aforesaid" refer to the words "where a tenant for life or statutory owner has become entitled to have a principal vesting deed or a vesting assent executed in his favour" in sect. 13 (*g*).

"Notice."

Inasmuch as "notice" in the Settled Land Act includes constructive notice (*h*), it is difficult to conceive of any case in which a purchaser from a tenant for life, knowing him to be such, would not have "notice" that he had become entitled to have a vesting instrument executed in his favour: for the

(*c*) See S. L. Act, s. 1 (1).
(*d*) *Ibid.* s. 2, above, p. 259.
(*e*) See Table of Definitions, above, Part I., Chapter VII. It also affects the writer's observations on the "Nature of settlements on trust for sale," above, Part III., Chapter V., p. 155.
(*f*) See above, Part IV., Chapter II., p. 260, where sect. 3 is set out.
(*g*) See above, Part IV., Chapter IV., p. 274, where sect. 13 is set out. For a further amendment of sect. 13, see L. P. Act, 1926, s. 6, above, p. 546.
(*h*) See Table of Definitions, above, Part I., Chapter VII.

purchaser's first inquiry would or should be for the "last or only vesting instrument affecting the settled land" (*i*). Appendix.

Sect. 31.—At the end of subsection (1) there shall be inserted the following paragraph:—

"Where there are trustees for the purposes of this Act of the instrument under which there is a tenant for life or statutory owner but there are no trustees for those purposes of a prior instrument, being one of the instruments by which a compound settlement is constituted, those trustees shall, unless and until trustees are appointed of the prior instrument or of the compound settlement, be the trustees for the purposes of this Act of the compound settlement."

Under sect. 31 of the Settled Land Act (*k*), apart from an order of the Court appointing trustees of a compound settlement, the only persons who can be trustees of such a settlement for the purposes of the Settled Land Act and the only persons who can execute the necessary vesting deed for giving effect to such a settlement are the trustees of that one of the instruments constituting the compound settlement which is earliest in date or operation, and, if there are no such trustees, they must be appointed. S. L. Act, s. 31.

The above amendment of this section avoids the necessity for such an appointment by providing, in effect, that, where there is a constituent instrument later in date or operation under which there is a tenant for life or statutory owner and of which there are Settled Land Act trustees, those trustees shall be the trustees for the purposes of the Act of the compound settlement, unless and until trustees are appointed of the prior instrument or of the compound settlement. Effect of amendment.

Sect. 39.—In paragraph (i) of subsection (4), for the words "a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days," there shall be substituted the words "the statutory powers and remedies for the recovery of the rent shall apply."

Sub-sect. (1) of sect. 39 of the Settled Land Act provides that, save as thereinafter provided, every sale (*l*) shall be made S. L. Act, s. 39.

(*i*) See S. L. Act, s. 72 (1), above, p. 326; and see sect. 110 (2), above, p. 344.

(*k*) Above, Part IV., Chapter II., p. 260, where sect. 31 is set out.

(*l*) That is, by a tenant for life or statutory owner under his statutory powers.

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Subss. (2) to (4). Sales in consideration of a rent.

for the best consideration in money that can reasonably be obtained. Sub-sects. (2) to (4) of the same section authorise sales to be made in consideration wholly or partly of a perpetual or terminable rent, and prescribe the conditions under which such sales may be made. These sub-sections, including paragraph (i) of sub-sect. (4), which is to be amended as above provided, are set out in Chapter V. of Part IV. of this volume (*m*).

Effect of amendment.

The effect of the amendment is that, in lieu of inserting in the conveyance a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days, reliance is to be placed on "the statutory powers and remedies for the recovery of the rent" (*n*), and such powers and remedies are to apply.

Sect. 78.—At the end of subsection (1) there shall be inserted the words "This subsection operates without prejudice to the rights of any person claiming under a disposition for valuable consideration of any such money securities or proceeds, made before the commencement of this Act."

S. L. Act, s. 78.

Sect. 78 of the Settled Land Act is set out in Chapter IV. of Part IV. of this volume (*o*), where attention is drawn to the effect of sub-sect. (1) as altering the law laid down in *In re Walker,* (1908) 2 Ch. 705. This sub-section, as there pointed out, is *retrospective*. Accordingly, the above amendment of the sub-section would appear to have been necessary for the protection of any person claiming under a disposition for valuable consideration, made before the commencement of the Settled Land Act, of any such money, securities or proceeds as are mentioned in the sub-section.

Sect. 105.—The words "if and when such remainderman or reversioner would, if the tenant for life were dead, be or have the powers of a tenant for life under this Act" shall be omitted.

S. L. Act, s. 105.

Sect. 105 of the Settled Land Act, as affected by the above amendment, is considered hereafter in connection with § 2

(*m*) Above, p. 313.

(*n*) Namely, those conferred by sect. 121 of the L. P. Act, above, Part III., Chapter XIII., p. 214.

(*o*) Above, pp. 298, 299.

("Powers of sale under Settled Land Acts") of Chapter IX. of the Treatise (*p*). Appendix.

Schedule II.—At the end of paragraph 1 (6), there shall be inserted the words "This sub-paragraph shall not apply to any legal estate or interest vested in a mortgagee or other purchaser for money or money's worth."

The Second Schedule to the Settled Land Act contains "Transitional Provisions affecting Existing Settlements" (*q*). These provisions are divided into three paragraphs, which are set out in the chapter of this book dealing with the "Mode of Effectuating Settlements" (*r*). S. L. Act, Sched. II.

Sub-paragraph (6) (*s*), which is to be amended as above provided, of paragraph 1 of the Schedule provides that, in the case of all settlements subsisting at the commencement of the Act, all the estates, interests and powers thereby limited, which are not by statute otherwise converted into equitable interests or powers, shall, as from the date of the principal vesting deed or the vesting order, take effect only in equity. Para. 1 (6). Conversion into equitable interests or powers.

LAW OF PROPERTY ACT, 1925.

Sect. 2.—For subsection (2) from the beginning to the words "are either," there shall be substituted the words "Where the legal estate affected is subject to a trust for sale, then if at the date of a conveyance made after the commencement of this Act under the trust for sale or the powers conferred on the trustees for sale, the trustees (whether original or substituted) are either."

In that subsection for the words "such equitable interest or power" there shall be substituted the words "any equitable interest or power having priority to the trust for sale."

Sect. 2 of the Property Act is set out and considered in the chapter of this book on "Protection of Purchasers" (*t*). L. P. Act, s. 2.

Sub-sect. (2), as above amended, of this section will read as follows:— Subs. (2) as amended.

(2) Where the legal estate affected is subject to a trust for sale, then if at the date of a conveyance made after the commencement of this

(*p*) Below, Part IX., Section IX.
(*q*) See S. L. Act, s. 37, above, Part I., Chapter V., p. 23.
(*r*) Above, Part IV., Chapter IV., Section iii., pp. 289 *et seq.*
(*s*) *Ibid.* p. 290.
(*t*) Above, Part III., Chapter XI., pp. 203 *et seq.*

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Act under the trust for sale or the powers conferred on the trustees for sale, the trustees (whether original or substituted) are either—

(a) two or more individuals approved or appointed by the Court or the successors in office of the individuals so approved or appointed; or

(b) a trust corporation,

any equitable interest or power having priority to the trust for sale shall, notwithstanding any stipulation to the contrary, be overreached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale.

Effect of amendments.

It will be noticed that the amendments are radical, for they limit the application of sub-section (1) to a legal estate which is subject to a trust for sale, and (2) to an equitable interest or power which has priority to the trust for sale.

Sect. 7.—At the end of subsection (1) there shall be inserted the words "and a fee simple subject to a legal or equitable right of entry or re-entry is for the purposes of this Act a fee simple absolute."

L. P. Act, s. 7.

Sub-sect. (1) (*u*), which is to be amended as above provided, of sect. 7 of the Property Act is as follows:—

Saving of certain legal estates and statutory powers.

7.—(1) A fee simple which, by virtue of the Lands Clauses Acts, the School Sites Acts, or any similar statute, is liable to be divested, is for the purposes of this Act a fee simple absolute, and remains liable to be divested as if this Act had not been passed.

Sect. 26.—For subsection (3) the following subsection shall be substituted:—

"(3) Trustees for sale shall so far as practicable consult the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale, and shall, so far as consistent with the general interest of the trust, give effect to the wishes of such persons, or, in the case of dispute, of the majority (according to the value of their combined interests) of such persons, but a purchaser shall not be concerned to see that the provisions of this subsection have been complied with."

"In the case of a trust for sale, not being a trust for sale created by or in pursuance of the powers conferred by this or any other Act, this subsection shall not apply unless the contrary intention appears in the disposition creating the trust."

L. P. Act, s. 26.

Sect. 26 of the Property Act, for sub-sect. (3) of which the above sub-section is to be substituted, is set out in the chapter of this book on "Dispositions on Trust for Sale" (*v*).

(*u*) Referred to above, Part III., Chapter I., p. 101.
(*v*) Above, Part III., Chapter VII., p. 169.

Sect. 27.—For subsection (2) the following subsection shall be substituted:—

"(2) Notwithstanding anything to the contrary in the instrument (if any) creating a trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money shall not be paid to or applied by the direction of fewer than two persons as trustees for sale, except where the trustee is a trust corporation, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, proceeds of sale or other capital money, nor, except where capital money arises on the transaction, render it necessary to have more than one trustee."

L. P. Act, s. 27.

This section is set out in the chapter on "Dispositions on Trust for Sale" (*w*). The main difference between the new and the old sub-section is that the former does not refer to a "disposition" on trust for sale and is concerned with the payment of money to persons "as trustees for sale" instead of as trustees of such a disposition.

Sect. 28.—In subsection (1), after the word "minority" there shall be inserted the words "and where by statute settled land is or becomes vested in the trustees of the settlement upon the statutory trusts, such trustees and their successors in office shall also have all the additional or larger powers (if any) conferred by the settlement on the tenant for life, statutory owner, or trustees of the settlement."

L. P. Act, s. 28.

This section is set out in the same chapter (*w*). The words to be inserted in sub-sect. (1), as above provided, are intended to meet the case where by statute (*x*) "settled land" (*y*) becomes vested in the trustees of "the settlement" (*y*) upon the "statutory trusts" (*x*).

Sect. 35.—At the end the following paragraph shall be inserted:—

"Where—

(a) an undivided share was subject to a settlement, and

(b) the settlement remains subsisting in respect of other property, and

(c) the trustees thereof are not the same persons as the trustees for sale,

then the statutory trusts include a trust for the trustees for sale to pay the proper proportion of the net proceeds of sale or other

(*w*) Above, Part III., Chapter VII., p. 170.
(*x*) See S. L. Act, s. 36, above, Part III., Chapter V., p. 160.
(*y*) As now defined, see above, p. 548.

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capital money attributable to the share to the trustees of the settlement to be held by them as capital money arising under the Settled Land Act, 1925."

L. P. Act, s. 35.

This section is set out in the chapter on "Tenancies in Common in Land" (*z*). It is thought that the paragraph to be inserted, as above provided, can apply only to a settlement subsisting at the commencement of the Property Act and comprising at such commencement (1) an undivided share in land, and (2) the entirety of other land. In such a case the entirety of the land in which the undivided share subsists will vest in trustees for sale in accordance with the provisions of Part IV. of the First Schedule to the Property Act (*a*), and the beneficial interest in the undivided share will be represented by a corresponding share in the net proceeds of sale and of the net rents and profits until sale (*b*).

Sect. 36.—At the end of subsection (2) the following words shall be inserted:—

"Nothing in this Act affects the right of a survivor of joint tenants, who is solely and beneficially interested, to deal with his legal estate as if it were not held on trust for sale."

L. P. Act, s. 36.

Sect. 36 of the Property Act is set out in the chapter on "Joint Tenancies in Land" (*c*). The words to be inserted as above provided are useful as removing a doubt which has arisen in practice.

Sect. 89.—At the end of subsection (6), there shall be inserted the words "In this subsection references to an apportionment include an equitable apportionment made without the consent of the lessor."

L. P. Act, s. 89.

This section is set out in the chapter on "Mortgages" (*d*). Sub-sect. (6) of that section provides (amongst other things and in effect) that that section does not apply where the mortgage term does not comprise the whole of the land comprised in the leasehold reversion unless (1) the rent (if any) payable in respect of that reversion has been "apportioned" as respects the land affected, or the rent is of no money value or no rent is reserved, and (2) the lessee's covenants and conditions (if

(*z*) Above, Part III., Chapter V., p. 152.
(*a*) Above, Part III., Chapter V.
(*b*) *Ibid.* p. 152.
(*c*) Above, Part III., Chapter VI., p. 163.
(*d*) Above, Part III., Chapter III., pp. 125, 126.

any) have been "apportioned," either expressly or by implication, as respects the land affected.

Effect of amendment. "Equitable apportionment."

The effect of the above amendment is that these references to an apportionment will include an equitable apportionment without the consent of the lessor. Special provisions as to equitable apportionment are contained in sect. 190 of the Property Act (*e*).

Sect. 94.—In subsection (2) for the words "date of the original advance" there shall be substituted the words "time when the original mortgage was created."

L. P. Act, s. 94.

Sub-sect. (2) of this section is set out and discussed in the chapter on "Mortgages" (*f*).

Effect of amendment.

The effect of the amendment appears to be merely to substitute one point of time for another, namely, the time when the original mortgage was created for the date of the first advance.

Sect. 96.—At the end of subsection (2) the following proviso shall be inserted:—

"In this subsection notice does not include notice implied by reason of registration under the Land Charges Act, 1925, or in a local deeds register."

L. P. Act, s. 96.

Sect. 96 (*g*) of the Property Act is as follows:—

Regulations respecting inspection, production and delivery of documents, and priorities.

96.—(1) [A mortgagor, as long as his right to redeem subsists, shall be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

[C. Act, 1881, s. 16.]

This section applies to mortgages made after the thirty-first day of December, eighteen hundred and eighty-one, and takes effect notwithstanding any stipulation to the contrary.]

(2) A mortgagee, whose mortgage is surrendered or otherwise extinguished, shall not be liable on account of delivering documents of title in his possession to the person not having the best right thereto, unless he has notice of the right or claim of a person having a better

(*e*) Above, Part III., Chapter XV., p. 247.
(*f*) *Ibid.* Chapter III., p. 128.
(*g*) Referred to in the chapter on Mortgages, above, Part III., Chapter III., p. 130.

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right, whether by virtue of a right to require a surrender or reconveyance or otherwise.

Sect. 125 (*h*).—In subsection (2) for the words "an office copy" there shall be substituted the words "a copy."

Schedule I., Part II.—In paragraph 3 after the words "hereinafter provided" the following proviso shall be inserted:—

> "The divesting of a legal estate by virtue of this paragraph shall not, where the person from whom the estate is so divested was a trustee, operate to prevent the legal estate being conveyed, or a legal estate being created, by him in favour of a purchaser for money or money's worth, if the purchaser has no notice of the trust and if the documents of title relating to the estate divested are produced by the trustee or by persons deriving title under him."

At the end of paragraph 7 there shall be inserted the following paragraph:—

> "(m) To vest in any person any legal estate affected by any rent, covenants or conditions if, before any proceedings are commenced in respect of the rent, covenants or conditions, and before any conveyance of the legal estate or dealing therewith *inter vivos* is effected, he or his personal representatives disclaim it in writing signed by him or them."

L. P. Act, Sched. I., Part II.

Part II. of the First Schedule to the Property Act has been considered in the chapter on "Vesting and Merger of Legal Estates" (*i*).

Para. 3. Vesting of legal estate in person "entitled to require" the same to be vested in him.

The first part of paragraph 3 of that Part of that Schedule down to and inclusive of the words "hereinafter provided," after which a new proviso is to be inserted as above enacted, is set out on page 107 of that chapter, where the automatic vesting in the *cestui que trust* of an estate held in trust for him by a bare trustee immediately after the commencement of the Property Act, is suggested as a necessary result of that paragraph.

Practical effect of that para.

Secret trust.

This result has affected the practice of conveyancing by throwing doubt on the title of an ostensible owner, on the ground that, immediately after such commencement, his legal estate may have been divested by virtue of some undisclosed trust in favour of some other person.

Effect of amendment.

The effect of the new proviso to be inserted after the words "hereinafter provided" appears to be that, where a legal estate

(*h*) See above, Part III., Chapter XIV., p. 216.
(*i*) Above, Part III., Chapter II., Section ii.

Protection of purchaser on purchase from trustee whose estate has been divested.

was *actually* divested by virtue of paragraph 3, but the person from whom it was so divested was a *trustee*, such divesting will not operate to prevent *the* legal estate, that is, the legal estate so divested, being conveyed, or a legal estate being created thereout, by *him*, that is, the trustee, in favour of a purchaser, provided (1) that the purchaser is a purchaser for money or money's worth (*k*); (2) that he has no notice (*l*) of the trust; and (3) that the documents of title relating to the estate divested are produced by the trustee or by persons deriving title under him.

Persons "deriving title" under the trustee.

It is thought that "deriving title" must here mean "ostensibly" deriving title, for, *ex hypothesi*, the trustee had no estate.

L. P. Act, Sched. I., Part II., para. 7. Savings.

Paragraph 7 of Part II. of the First Schedule to the Property Act is set out above on pages 109 and 110, and specifies in paragraphs (a) to (l) a number of consequences which are *not* to ensue from anything in that Part of that Schedule. A new paragraph (m) to the effect above enacted is now to be added at the end of paragraph 7.

Schedule I., Part IV.—In paragraph 1 (3), for the words "term of years absolute," there shall be substituted the words "mortgage, and free from any interests, powers, and charges subsisting under the settlement, which have priority to the interests of the persons entitled to the undivided shares."

In paragraph 1 (4) (iii) for the words "vest the land" there shall be substituted the words "thereupon the land shall by virtue of this Act vest."

At the end of paragraph 1 (10) there shall be inserted the words "within eighteen months from the commencement of this Act."

In paragraph 1 (11), for the words "more than one half" there shall be substituted the words "one half or upwards."

In paragraph 1 (12) after the word "include" there shall be inserted the words "a legal rentcharge affecting the entirety."

At the end of paragraph 3 the following new paragraph shall be inserted:—

"4. Where, immediately before the commencement of this Act, there are two or more tenants for life of full age entitled under the same settlement in undivided shares, and, after the cesser of all their interests in the income of the settled land, the entirety of

(*k*) See above, Part III., Chapter X., p. 198.
(*l*) See *ibid.*, pp. 199 *et seq.*

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the land is limited so as to devolve together (not in undivided shares), their interests shall, but without prejudice to any beneficial interest, be converted into a joint tenancy, and the joint tenants and the survivor of them shall, until the said cesser occurs, constitute the tenant for life for the purposes of the Settled Land Act, 1925, and this Act."

L. P. Act, Sched. I., Part IV.

The Transitional Provisions (*m*) contained in Part IV. of the First Schedule to the Property Act are set out and considered in the chapter on "Tenancies in Common in Land" (*n*).

Amendments.

As will be seen above, the schedule to the Amending Act effects a number of minor amendments in these provisions.

New para. 4. Application.

Amongst such amendments is the insertion of a new paragraph 4 at the end of paragraph 3 (*o*). This new paragraph applies only where (1) immediately *before* the commencement of the Property Act there were two or more tenants for life (*p*) of full age entitled under the same settlement in undivided shares, and (2) after the cesser of all their interests in the income of the settled land, the *entirety* of the land is limited so as to devolve *together* (*not in undivided shares*).

Vesting deed.

Where the new paragraph applies, it will oust sect. 36 of the Settled Land Act (*q*), and a vesting deed must be executed before the newly-constituted joint tenants for life can exercise their statutory powers (*r*).

TRUSTEE ACT, 1925.

Sect. 14 (*s*).—In paragraph (a) of subsection (2), the words "disposition on" shall be omitted.

Sect. 25 (*t*).—In subsection (4), after the words "execution thereof," there shall be inserted the words "or where not executed within the United Kingdom within ten days after its receipt in the United Kingdom."

(*m*) Above, p. 23.
(*n*) Above, Part III., Chapter V., pp. 151 *et seq.*
(*o*) Above, p. 161.
(*p*) That is, within the meaning of the S. L. Act, 1882. As to tenants for life in common under that Act, see above, p. 263.
(*q*) Above, p. 160.
(*r*) S. L. Act, s. 13, above, p. 274.
(*s*) Above, p. 361. The omission of "disposition on" is in accordance with the omission of the same words in the substituted sub-sect. (2) of sect. 27 of the Property Act; above, p. 553.
(*t*) Above, p. 367.

Sect. 26 (*u*).—In subsection (1) for the words "which may have accrued or been claimed" there shall be substituted the words "which may have accrued and been claimed."

Sect. 27 (*u*).—In subsection (1) for the words "in a daily London newspaper and also if the property includes land not situated in London in a daily or weekly newspaper circulating in the district in which the land is situated" there shall be substituted the words "in a newspaper circulating in the district in which the land is situated."

LAND CHARGES ACT, 1925.

Sect. 10.—In Class C (iii) at the end, the following proviso shall be inserted:—

"Provided that a charge given by way of indemnity against rents equitably apportioned or charged exclusively on land in exoneration of other land and against the breach or non-observance of covenants or conditions, shall not be deemed to be a general equitable charge and shall not be registrable as a land charge under this Act."

The subject of land charges is discussed in Chapter VI. of Part VI. of this book, and Section iv. of that chapter deals with land charges of Class C (*w*), whereof sub-class (iii) is "a general equitable charge."

L. C. Act, s. 10 (1). Class C (iii) (*v*).

The subject of rents (1) equitably apportioned or (2) charged exclusively on land in exoneration of other land is dealt with in sect. 190 of the Property Act (*x*); and the subject of indemnities against rents and against breaches of covenants and conditions is dealt with in sect. 189 of the same Act (*y*).

L. P. Act, s. 190. Rents equitably apportioned. *Ib.* s. 189. Indemnities.

For subsection (6) the following subsection shall be substituted:—

"(6) In the case of a general equitable charge, restrictive covenant, equitable easement or estate contract affecting land within any of the three ridings, and in the case of any other land charge (not being a local land charge) created by a document which shows on the face of it that the charge affects land within any of those ridings, registration shall be effected in the prescribed manner in the appropriate local deeds registry in place of the registry."

The original sub-sect. (6) is set out and considered in Section vii. of the last-mentioned chapter (*z*).

L. C. Act, s. 10 (6).

(*u*) Above, p. 369.
(*v*) Above, Part VI., Chapter VI., pp. 401 *et seq.*
(*w*) *Ibid.* p. 407.
(*x*) Above, Part III., Chapter XV., p. 247.
(*y*) *Ibid.* p. 245.
(*z*) Above, p. 415.

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Effect of substituted subs. (6).

The substituted sub-section is identical with the original sub-section down to and inclusive of the words "the three ridings," but extends the operation of the latter to the case of "any other land charge (not being a local land charge) created by a document which shows on the face of it that the charge affects land within any of those ridings," and makes registration in the appropriate local deeds registry "in place of the registry" imperative instead of merely "sufficient."

Sect. 15.—At the end of subsection (1) the following paragraph shall be inserted:—

"For the purposes of this section any sum which is recoverable by a local authority under any of the Acts aforesaid from successive owners or occupiers of the property in respect of which the sum is recoverable shall, whether such sum is expressed to be a charge on the property or not, be deemed to be a charge."

At the end of paragraph (a) of subsection (6) there shall be inserted the words "whether by reference to the estate owner or to the land affected or otherwise" and paragraph (b) of the same subsection shall be omitted.

For subsection (7) the following subsection shall be substituted:—

"The foregoing provisions of this section shall apply to—

(a) any town planning scheme made by, or any authority or resolution to prepare or adopt a town planning scheme given to or passed by, a local authority, whether made, given or passed before or after the commencement of this Act; and

(b) any prohibition of or restriction on the user or mode of user of land or buildings imposed by a local authority after the commencement of this Act by order, instrument, or resolution, or enforceable by a local authority under any covenant or agreement made with them after the commencement of this Act, or by virtue of any conditions attached to a consent, approval, or licence granted by a local authority after that date, being a prohibition or restriction binding on successive owners of the land or buildings, and not being—

(i) a prohibition or restriction operating over the whole of the district of the authority or over the whole of any contributory place thereof; or

(ii) a prohibition or restriction which is, or which may become, enforceable by virtue of a town-planning scheme; or

(iii) a prohibition or restriction imposed by a covenant or agreement made between a lessor and lessee;

as if the scheme, resolution, authority, prohibition, or restriction were a local land charge, and the same shall be registered by the proper officer as a local land charge accordingly."

Sect. 15, as originally enacted, of the Land Charges Act is set out and discussed in the chapter on "Local Land Charges" (*a*). L. C. Act, s. 15.

Universities and College Estates Act, 1925.

Sect. 3.—In paragraph (i) of subsection (4), for the words "a condition of re-entry on the rent not being paid within a time therein specified, not exceeding thirty days," there shall be substituted the words "the statutory powers and remedies for the recovery of the rent shall apply."

(*a*) Above, Part VI., Chapter VII., p. 418.

PART IX.

Revision of the Treatise.

EXPLANATORY NOTE.

THE purpose of this Part of this book is to indicate, by a series of Sections numbered to correspond with the numbers of the relative Chapters of the Treatise, in what manner each Chapter of the Treatise and the notes thereto must be modified in order to bring them into line with the changes effected by the new legislation.

These changes may, *for this purpose* (*a*), be classed under two main heads: (1) What may be called "formal changes," resulting from the repeal of various enactments *in pari materiâ* with the subject-matter of a Consolidation Act and in force at its commencement, which are repealed for consolidation purposes only, and are, by the same Act, re-enacted textually or substantially in their original form; and (2) what in the Preface to the Treatise are described as "independent changes in the law," that is, as the writer understands the expression, changes independent of any scheme of consolidation, and altering the *substance* of the law as existing immediately before the commencement of the Consolidating Act.

Where any Chapter of the Treatise contains references to numerous enactments in force at the commencement of the Consolidation Acts, and repealed and re-enacted, *with or without amendment*, by one of those Acts, the relative Section of this book will, where this may conveniently be done, start with a Table showing each repealed enactment which is referred to

(*a*) For a classification, *generally*, of the changes effected by the new law, see above, Part I., Chap. IV., Section ii., pp. 21, 22.

in the Chapter, and the enactment (if any) by which it is replaced (*b*).

In every case, except where otherwise stated, the repeal of any such enactment is effected by the Act which contains the substituted enactment, or if there is no substituted enactment, then by the Act last previously mentioned in the column of the Table which specifies new enactments.

Where in the Table at the head of a Section a repealed enactment is shown as being re-enacted, the reader is asked to assume that, *in the writer's view*, unless the contrary appears—

(1) The substituted enactment effects no change in the law;

(2) The observations in the Treatise and any decisions of the Courts as to the meaning, effect or operation of the repealed enactment will apply equally to the substituted enactment; and

(3) *Quoad* the repealed enactment the only change necessary, where it is referred to in the Treatise, will be (where the substituted enactment is applicable) to substitute a reference to the substituted enactment for the reference to the repealed enactment.

It should be further assumed that, where any passage or note in the Treatise is passed over without comment, the writer's view is that, apart from any substitution that may be necessary of a new enactment for a repealed enactment, the passage or note is not affected by any changes in the law.

The numerous references in the Treatise to an "open contract" must be read subject to the provisions of sect. 46 of the Property Act as to contracts by correspondence (*c*).

The *Addenda* on pages xlv to xlviii of Volume I., and the *Errata, Addenda* and *Further Addenda* on pages xxxv to xlvi of Volume II. of the Treatise should not be overlooked.

(*b*) The repeals and re-enactments of the "statutory conditions of sale" contained in sects. 1 and 2 of the V. and P. Act, 1874, and sects. 3 and 13 of the C. Act, 1881, are comprised in a separate table; above, p. 133.

(*c*) Above, Part III., Chap. IV., pp. 143 *et seq.*

SECTION I.

OF THE FORMATION OF THE CONTRACT OF SALE.

Treatise, Chap. I. pp. 1 to 30.

The Statute of Frauds (Stat. 29 Car. 2, s. 4).

THIS chapter is devoted mainly to the requisites of a valid and binding contract for the sale of land, and, in particular, as regards the requisite of form, to sect. 4 of the Statute of Frauds; to the cases decided on that section; and to the circumstances in which (as in the case of sales by the Court, or where there has been part performance of the contract) the requirements of that section are dispensed with.

That section enacts "That no action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriage of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised."

The words "or upon any contract or sale of lands, tenements or hereditaments or any interest in or concerning them" in this section are repealed by, and as from the commencement of, the Law of Property Act, 1925 (*a*).

In regard to the words "contract *or* sale" (not "contract *for* sale") it has often been decided that the section applies to contracts concerning an interest in land not being contracts of

(*a*) L. P. Act, s. 207, and Seventh Schedule.

sale (*b*); so that, in effect, the section applies to any contract for the sale *or other disposition* (*c*) of lands, tenements or hereditaments or any interest in or concerning them.

It is apprehended, therefore, that the following section of the Law of Property Act, 1925, merely replaces the repealed enactment, and does not effect and, as it applies to contracts whether made before or after the commencement of the Act, was not intended to effect any alteration in the law; and that the many decisions on the repealed enactment will apply equally to the substituted section, which is as follows (*d*):—

Contracts for sale, &c. of land to be in writing.

40.—(1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

(2) This section applies to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance, or sales by the Court.

Accordingly, as from the commencement of the Property Act, this chapter will require formal amendment by substituting for references to the repealed enactment (*e*) references to the substituted section.

Treatise, p. 28, "payment of deposit on sales by private contract."

On p. 28 of this chapter there is a reference to the principle (*f*) in accordance with which the Court, in some cases, while refusing to enforce specific performance against a purchaser, will yet hold him to his bargain at law, and decline to order the return of his deposit.

This principle, or the application of it, will, as from the commencement of the Property Act, be substantially affected

(*b*) *McManus* v. *Cooke,* 35 C. D., per Kay, L. J. (then Kay, J.), at pp. 687, 689. See the cases cited in the judgment, and in Leake on Contracts, 7th ed., pp. 169 to 174.

(*c*) Including a contract for a disposition by will: see *Maddison* v. *Alderson,* 8 A. C. at p. 467.

(*d*) For the meanings of "sale," "disposition" and "land" in this section, see the Table of Definitions, above, Part I., Chap. VII.

(*e*) See pp. 3, 6, 7, 9, 10, 11, 12, 13, 16, 20, 21 and 25 of this chapter of the Treatise.

(*f*) Illustrated by the case of *Scott* v. *Alvarez,* cited in n. (*x*) on this page of the Treatise.

Part IX. Sect. I.

by the power or discretion given to the Court by sub-sect. (2) of the following section (*g*) of that Act:—

Applications to the Court by vendor and purchaser.

49.—(1) A vendor or purchaser of any interest in land, or their representatives respectively, may apply in a summary way to the Court, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the Court may make such order upon the application as to the Court may appear just, and may order how and by whom all or any of the costs of and incident to the application are to be borne and paid.

(2) Where the Court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the Court may, if it thinks fit, order the repayment of any deposit.

(3) This section applies to a contract for the sale or exchange of any interest in land.

It is suggested that the discretion given to the Court by sub-sect. (2) of this section will be exercised judicially (*h*) and with regard, possibly, to the conduct of the parties, the hardship involved in granting or refusing the relief, and other circumstances similar to those which, in doubtful cases, may influence the Court in deciding whether to grant or refuse specific performance. It is suggested, in other words, that the jurisdiction conferred by the sub-section is purely equitable, and enables the Court, in a proper case, to override the strict rule of law which would otherwise be applicable, and to avoid a result which, in the case cited below, was described as "not satisfactory" (*i*).

It will be seen that the section expressly extends to contracts for an exchange (*k*).

Except as above appears, the new legislation does not, it is thought, in any way affect or modify the law as stated in this chapter.

(*g*) Sub-sect. (1) of this section replaces sect. 9 of the V. & P. Act, 1874, so far as the latter section applies to "England" (*i.e.*, England and Wales; see 20 Geo. 2, c. 43, s. 3).

(*h*) As to judicial discretion, see Treatise, Chapter II., pp. 36 and 37.

(*i*) See the observations of Lord Lindley (then Lindley, L. J.) in *Scott* v. *Alvarez*, 1895, 2 Ch. at pp. 612 and 614.

(*k*) See *Re British Land Co. and Allen*, 44 Sol. J. 593.

SECTION II.

OF THE PARTIES' RIGHTS, OBLIGATIONS AND REMEDIES GENERALLY.

Treatise, Chap. II. pp. 31 to 51.

(i) *Repeals and re-enactments.*

After the commencement of the Property Act, references in this chapter to sects. 1 and 2 of the Vendor and Purchaser Act, 1874, and to sect. 3 of the Conveyancing Act, 1881, must be replaced by references to the substituted enactments in accordance with the table set out in the chapter of this book on "Statutory Conditions of Sale" (*a*); and references to sect. 9 of the Conveyancing Act, 1881, must be replaced by references to sect. 64 of the Property Act, which reproduces the repealed section textually, sub-section by sub-section.

(ii) *Substantive amendments.*

Effect of the new system of conveyancing.

In regard to a contract for the sale of a "legal estate," this chapter must be read subject to the alterations effected by the new legislation in the system and methods of conveyancing, arising mainly from the distinction between "legal estates" and "equitable interests," as respectively defined in sect. 1 of the Property Act; the protection afforded to a "purchaser" of a "legal estate" against "equitable interests," and the express provisions in sect. 10 of that Act as to the title to be shown to "legal estates" (*b*).

Wherever in this chapter of the treatise forty years is referred to as being the period for which title is by law required to be shown, thirty years must be substituted in all cases to which the Property Act applies (*c*).

(*a*) Above, p. 133.
(*b*) See above, p. 208.
(*c*) L. P. Act, s. 44 (1); above, p. 134.

Part IX. Sect. II.

Treatise, pp. 32-3, and n. (*g*), "verification of abstract."

Under the Property Act the expense to be borne by the vendor of producing documents of title and procuring evidence of title will not be confined to documents or evidence in his own possession, but will extend to documents or evidence in the possession of his mortgagee or trustee, thus overruling the decision in *Re Willett and Argenti* as regards documents in the possession of the vendor's mortgagee (*d*).

Treatise, p. 34, "and hand over title deeds."

Under sect. 45 (9) of the Property Act, which replaces sect. 2 (rule 5) of the Vendor and Purchaser Act, 1874, a vendor is entitled to retain documents of title not only, as under the repealed enactment, where he retains any part of the land to which the documents relate, but also where the document consists of any such instrument as is mentioned in the substituted enactment (*e*).

Treatise, p. 37, "unfairness," "hardship."

Where the Court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the Court, under sub-sect. (2) of sect. 49 of the Property Act (*f*), will have power, if it thinks fit, to order the repayment of any deposit. The statements, therefore, on this and the next following page of the treatise, as also the cases cited in notes (*k*) and (*l*) on p. 37, as to the application of the rules of law, notwithstanding the equitable relief given to a purchaser, must be read subject to the power so given to the Court.

Treatise, p. 37, "4. Vendor and Purchaser Summons."

The application will be under sub-sect. (1) of sect. 49 of the Property Act, replacing sect. 9 of the Vendor and Purchaser Act, 1874 (*g*).

Treatise, p. 38, "Statute of Frauds."

As we have seen (*h*), sect. 4 of the Statute of Frauds, so far as it relates to contracts concerning land, is replaced by sect. 40 of the Property Act.

Treatise, p. 38, "contract formed by letters."

Treatise, pp. 39 to 47. "terms of an open contract."

The conditions comprised or implied in an open contract will, having regard to the changes in the law effected by the Property Act or by other legislation passed since the publica-

(*d*) L. P. Act, s. 45 (4); above, p. 137.
(*e*) Above, p. 138.
(*f*) Above, p. 566.
(*g*) Above, p. 566.
(*h*) Above, p. 564.

tion of the third edition of the treatise, require modification as follows:—

Thirty years will be substituted for forty years as the period during which title must be shown, and the obligation to show the whole "equitable" title will be subject to the alterations, already referred to (*i*), in the system and methods of conveyancing. Treatise, p. 39, Condition 1 (2) and (3).

Condition 1 (6) must be modified by adding the following proviso (*k*):— Treatise, p. 40, Condition 1 (6).

"Provided that this condition shall not deprive the purchaser of the right to require the production or an abstract or copy of—

(i) any power of attorney under which any abstracted document is executed; or

(ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or

(iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document."

This condition must be qualified by a proviso that documents in the possession of the vendor's mortgagee or trustee must be produced at the expense of the vendor (*l*). Treatise, p. 42, Condition 3 (1).

At the end of this condition the words "or in that of his mortgagee or trustee" must be inserted (*l*), and the cases cited in note (*o*) will be overruled, so far as they conflict with this alteration in the law. Treatise, p. 43, Condition 3 (2).

Having regard to the conveyancing changes above referred to, it seems that a "proper conveyance" will mean an assurance effectual to vest in the purchaser or his nominee the whole "legal estate" contracted for, and to *bind* every "equitable Treatise, p. 43, Condition 5 (2).

(*i*) Above, p. 567.
(*k*) L. P. Act, s. 45 (1); above, p. 136.
(*l*) L. P. Act, s. 45 (4); above, p. 137.

Part IX. Sect. II.

interest" affecting such "legal estate," and containing the usual covenants for title by the vendor. These covenants, in the case of "conveyances subject to rents," will include the covenants implied by virtue of sect. 77 of the Property Act (*m*).

Treatise, p. 44, Condition 5 (4).

The Finance Act, 1923 (*n*), repealed, as from the commencement of that Act (*o*), such parts of sect. 4 of the Finance (1909-10) Act, 1910, as were not repealed by sect. 57 of the Finance Act, 1920 (*p*). Condition 5 (4) should, therefore, be omitted.

Treatise, p. 44, Condition 6 (1).

Condition 6 (1) should read as follows:—

"The vendor shall (except as hereinafter mentioned) deliver to the purchaser on completion all muniments of title relating solely to the property purchased, but he shall retain any documents of title which are in his own possession and relate to any part of an estate retained by him, as well as to the property, and also any document in his own possession (whether or not relating solely to the property purchased) which consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust; and he shall not be required to obtain and hand over to the purchaser any such instrument which is in the possession of any other person, nor any documents of title, which relate to other property as well as to the property sold, and of which any person other than the vendor is entitled to retain possession" (*q*).

In addition to the conditions specified in the text, there will be implied the statutory condition imported by sect. 47 (*r*) of the Property Act in any case where, after the date of the contract, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract.

(*m*) Below, Section XIX.
(*n*) Stat. 13 & 14 Vict. c. 14, s. 38.
(*o*) The 18th July, 1923.
(*p*) See Addenda on p. xl. of Vol. II. of the Treatise to pp. 664—667 of the Treatise.
(*q*) This appears to be the effect of sect. 45 (9) of the L. P. Act; above, p. 138.
(*r*) Above, p. 148.

SECTION III.

OF THE USUAL CONDITIONS OF SALE.

Treatise, Chap. III. pp. 51 to 87.

(i) *Repeals and re-enactments.*

As we have seen (*a*), sect. 4 of the Statute of Frauds, so far as it relates to contracts for the sale or other disposition of land or any interest in land, is repealed and re-enacted by sect. 40 of the Property Act.

Treatise, p. 52, "signing a memorandum."

Sect. 25 (7) of the Judicature Act, 1873, is repealed by, and as from the commencement of, the Property Act (*b*), and is re-enacted by the following section of the latter Act:—

Treatise, p. 54, and n. (*r*), "now applied at law."

41. Stipulations in a contract, as to time or otherwise, which according to rules of equity are not deemed to be or to have become of the essence of the contract, are also construed and have effect at law in accordance with the same rules.

Stipulations not of the essence of a contract.

Sect. 10 of the Judicature Act, 1875, referred to in note (*r*) on this page, deals with the rules as to creditors, debts and otherwise which are to prevail in the case of a person dying insolvent; and, so far as it applies to deaths occurring after the commencement of the Administration Act, is repealed and replaced by the rules set out in Part I. of the First Schedule to that Act (*c*).

(ii) *Substantive amendments.*

As we have seen (*d*), in favour of a purchaser for money or money's worth, a stipulation contained in any contract for the sale or exchange of land made after the commencement of the Property Act to the effect that an outstanding legal estate is

Treatise, p. 61, § 10, "conveyance"; p. 66, § 9, "completion."

(*a*) Above, p. 564.
(*b*) L. P. Act, s. 207, and Seventh Schedule.
(*c*) A. E. Act, s. 56, and Second Schedule, Part I.; sect. 34 and First Schedule, Part I.
(*d*) Above, p. 140.

Part IX. Sect. III.

to be traced or got in by or at the expense of a purchaser, or that no objection is to be taken on account of an outstanding legal estate, will be void (*e*); as will also, it is thought, be any stipulation that the purchaser shall bear the expense of the concurrence in the conveyance of all necessary parties other than the vendor (*e*).

Treatise, p. 63, and nn. (*f*) & (*g*), "stipulations left to be implied on sales by auction."

Reference has already been made to this passage (*f*) and to the "statutory conditions" imported by the enactments referred to in notes (*f*) and (*g*) on this page; and, as we have seen (*g*), these enactments are replaced, with certain modifications and with the addition of certain wholly new conditions, by sects. 42 to 48 of the Property Act.

There seems no reason to doubt that the practice, mentioned in this passage, of leaving to implication such conditions of sale as are incorporated by statute will continue, subject, of course, to any modifications, permitted by law, of such conditions which may be desired or agreed to in any particular case.

Treatise, p. 66, and n. (*c*), § 9, "completion."

Having regard to the provisions of sects. 42 (2), (3) and 43 of the Property Act (*h*), the concluding words of this condition, from and inclusive of the words "but such assurance," will require modification in contracts affected by that Act. If altered to read "but such assurance shall be prepared by and at the expense of the purchaser, and shall be left at the office aforesaid not less than ten days before the said —— day of —— next," they would appear to be free from objection.

Treatise, p. 69, "general condition on sale under a trust for . . . sale."

Having regard to the provisions of sub-sect. (1) of sect. 42 (*i*) and to sect. 27 (*k*) of the Property Act, a purchaser of a legal estate from a trustee selling under a trust for sale will not be concerned or entitled to require the concurrence of the beneficiaries, whether *sui juris* and absolutely entitled or not.

Having regard to sub-sect. (2) of sect. 27, it may be that a sole trustee (being neither a trust corporation nor a personal

(*e*) L. P. Act, s. 42 (1), (2), (3). See also sect. 43.
(*f*) Above, p. 133.
(*g*) Above, pp. 133, 139.
(*h*) Above, pp. 140, 142.
(*i*) Above, p. 139.
(*k*) Above, p. 170.

representative) could make a valid *contract* to sell; but he could not give a valid receipt for the purchase-money on completion.

Though a mortgagee selling under his power of sale should show on the face of the contract that he is so selling, no stipulation precluding the purchaser from requiring the concurrence of the persons entitled to the equity of redemption appears to be necessary, having regard to the powers conferred by the Property Act (*l*) upon a mortgagee when realising his security.

Treatise, p. 69, "sale by mortgagee under his power of sale."

The application of the rule or principle acted upon in the cases cited in notes (*s*) and (*x*) on p. 70 of the treatise will, after the commencement of the Property Act, be subject to the power or discretion to order the return of any deposit given to the Court by sub-sect. (2) of sect. 49 of that Act (*m*).

Treatise, pp. 69, 70 and nn. (*s*) & (*x*), "special conditions of sale."

As we have seen (*n*), after the commencement of the Property Act, thirty years is substituted for forty years as the period of commencement of title which a purchaser of land may require.

Treatise, p. 70, "title commencing with an instrument not a good root of title."

This subject is discussed in the section of this book dealing with Chapter VIII. of the treatise (*o*).

Treatise, p. 72, "estate duty on death of a joint mortgagee."

This passage must be read subject to the following provisions contained in sect. 74 of the Property Act:—

Treatise, p. 73, "proof of constitution, &c. of corporation," &c.

Execution of instruments by or on behalf of corporations.

74.—(1) In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation, and where a seal purporting to be the seal of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

(2) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.

(*l*) Above, p. 123.
(*m*) Above, p. 566.
(*n*) Above, p. 134.
(*o*) Below, Section VIII.

Part IX. Sect. III.

(3) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and in the case of a deed by affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.

(4) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised.

(5) The foregoing provisions of this section apply to transactions wherever effected, but only to deeds and instruments executed after the commencement of this Act, except that, in the case of powers or appointments of an agent or officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this Act or by this Act.

(6) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed.

Treatise, p. 73, "fire insurance."

As we have seen (*p*), a new condition of sale as to insurance will apply to contracts made after the commencement of the Property Act, subject to any stipulation to the contrary contained in the contract (*q*).

Implied covenants in conveyances subject to rents.

A new set of implied covenants, applicable to conveyances made after the commencement of the Property Act, of the entirety or part of land affected by a rentcharge or comprised in a lease has been introduced by sect. 77 of that Act (*r*).

This section, while rendering unnecessary any express covenants for indemnity, in cases to which it applies, leaves unaffected the desirability of stipulating that the assignee or

(*p*) Above, p. 148.
(*q*) L. P. Act, s. 47.
(*r*) Below, Section XIX.

grantee to whom the conveyance is delivered should, either at his own expense or otherwise, execute and deliver to the assignor or grantor a duplicate of the conveyance.

The passages of the treatise to which the following marginal notes apply, namely, "Purchaser to give the usual covenant of indemnity" (p. 75), "Leaseholds held under lease comprising other property" (p. 76), and "Sale of lands subject, together with other lands, to some rent" (p. 76), should be read subject to, and in connection with, the section last referred to.

Sect. 3 (7) of the Conveyancing Act, 1881, is repealed and replaced by sect. 45 (5) of the Property Act.

Treatise, pp. 78-9, and n. (*b*), "purchaser of several lots entitled to one abstract."

As we have seen (*s*), the expense of the production of title deeds in the possession of the vendor's mortgagees will, in future, be thrown on the vendor, with the result that the decision in this respect in *Re Willett and Argenti* will be overruled; and any stipulation requiring the purchaser to pay the costs of getting in outstanding estates will be void.

Treatise, p. 80, and n. (*m*).

Under the new statutory conditions of sale (*t*) the position of the parties under an open contract will be modified in that, while the vendor can be required to make out a thirty years' title only, the purchaser will be relieved of the expense of obtaining evidence in the possession whether of the vendor or of the latter's mortgagee or trustee.

Treatise, pp. 80-1, "vendor's reasons for not desiring an open contract."

As we have seen (*u*), the risk of a purchaser losing his deposit, even in cases where specific performance would be refused against him, will, after the commencement of the Property Act, be modified by the powers given to the Court by sub-sect. (2) of sect. 49 of that Act.

Treatise, pp. 82-3, "deposit."

This passage must, in future, be read with the substitution of thirty years for forty years, and subject to the power given to the Court by the sub-section last referred to.

Treatise, p. 84, commencement of title.

(*s*) Above, pp. 137, 140.
(*t*) Above, Part III., Chapter IV.
(*u*) Above, p. 566.

Part IX. Sect. III.

Treatise, p. 85, "expense of verification of the abstract."

As we have seen (*x*), the purchaser's obligation in this respect is now relaxed by putting evidence of title in the possession of the vendor's mortgagee or trustee on the same footing as evidence of title in the possession of the vendor himself.

Treatise, p. 86, "completion."

As we have also seen (*y*), any provision throwing upon the purchaser the expense of getting in any outstanding estate, or (probably) of the concurrence in the conveyance of any necessary parties besides the vendor, will be void.

(*x*) Above, p. 137.
(*y*) Above, p. 140.

SECTION IV.

OF THE VENDOR'S OBLIGATION TO SHOW A GOOD TITLE AND ITS DISCHARGE (*a*).

Treatise. Chap. IV. pp. 88 to 148.

REFERENCES in this chapter of the Treatise to the repealed "Statutory Conditions of Sale" must be replaced by references to the substituted enactments in accordance with the Table on pages 133 and 134 of this book; and thirty years must be substituted for forty years as the period of commencement of title which a purchaser may require (*b*).

We have seen that each of the Consolidation Acts contains a definition of "land" and that "land" does not include an undivided share in land (*c*).

Treatise, p. 91, and n. (*u*). "Land."

Sub-sects. (6) and (7) of sect. 44 of the Property Act (*d*) deal with the question of the title to be shown on a purchase of enfranchised land. All copyhold land has been enfranchised by Part V. of the Law of Property Act, 1922 (*e*).

Treatise, pp. 92, 93. "Enfranchised copyholds."

The Land Registry Act, 1862, and the Land Transfer Acts, 1875 and 1897 (*f*), are repealed and replaced by the Registration Act (*g*).

Treatise, p. 93, and n. (*d*).

This section of the chapter must be read subject to, and in connection with, the chapter of this book on the title to be shown to legal estates (*h*), and, as regards settled land, the restrictions imposed by sect. 110 of the Settled Land Act (*i*).

Treatise, pp. 97 to 106. § 2. "Of the Abstract of Title."

(*a*) See Explanatory Note, above, p. 562.
(*b*) L. P. Act, s. 44 (1), above, p. 134.
(*c*) See Table of Definitions, above, Part I., Chapter VII.
(*d*) Above p. 135.
(*e*) Above, Part II., Chapter II.
(*f*) Except Part I. of the Land Transfer Act, 1897.
(*g*) Above, Part VIII.
(*h*) Above, Part III., Chapter XII.
(*i*) Above, Part IV., Chapter X., p. 344.

Part IX. Sect. IV.

Treatise, p. 104. "Documents incorporated by reference."

The law as stated in this passage and in the note (*m*) thereto has received statutory recognition in paragraph (iii) of the proviso to sub-sect. (1) of sect. 45 of the Property Act (*l*), which provides that that sub-section shall not deprive a purchaser of the right to require the production, or an abstract or copy, of any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

Treatise, pp. 107, 112, 114, 124, 129, 136. "Expense of evidence, &c., not in vendor's possession."

Evidence and documents in the possession of the vendor's mortgagee or trustee are, by sect. 45 (4) of the Property Act (*l*), placed on the same footing as evidence and documents in the vendor's possession.

Treatise, pp. 110, 111, and nn. (*z*), (*a*), (*e*), (*f*). "Title-deeds executed by attorney."

The proviso, above referred to, to sect. 45 (1) of the Property Act expressly saves the right of a purchaser to the production, and an abstract or copy, of any power of attorney under which any abstracted document is executed.

The provisions of sects. 123 to 129 of the Property Act, whereof sects. 126 and 127 re-enact respectively the repealed sects. 8 and 9 of the Conveyancing Act, 1882, have already been considered (*m*).

Treatise, pp. 114, 115 and n. (*c*). "Mortgagor's right of access," &c.

Sect. 16 of the Conveyancing Act, 1881, is replaced by sect. 96 (1) of the Property Act (*n*). Sect. 1 of the Conveyancing Act, 1881 (short title, commencement, extent), is repealed. Sect. 2 (the interpretation section) is not repealed (*o*).

Treatise, p. 116 and n. (*g*). "Right to production under statutory acknowledgment."

Sect. 9 of the Conveyancing Act, 1881, is re-enacted by sect. 64 of the Property Act.

Treatise, p. 122 and n. (*l*). Outstanding legal estates.

As regards legal estates outstanding at the commencement of the Property Act, this passage must be read in connection with the provisions of Part II. ("Vesting of Legal Estates") of the First Schedule to the Property Act (*p*).

(*l*) Above, p. 137.
(*m*) Above, Part III., Chapter XIV., p. 216.
(*n*) See above, p. 130.
(*o*) See above, p. 17.
(*p*) Above, pp. 106 to 110.

Part IX. Sect. IV.

Sect. 167 of the Property Act, which abolishes acknowledgments by married women, is considered hereafter in connection with Chapter XVI. of the Treatise, which treats "Of Personal Incapacity" (*q*).

Treatise, p. 132. Acknowledgment.

As we have seen, by the Law of Property Act, 1922, copyhold tenure is abolished and all copyhold land is enfranchised and becomes of freehold tenure (*r*). The same Act provides (*s*) facilities for the inspection of Court Rolls by any person interested in enfranchised land, and (*t*) for manorial documents being in the custody of the Master of the Rolls, and (*s*) that Court Rolls shall (whether before or after the manorial incidents have been extinguished), for the purposes of sect. 14 of the Evidence Act, 1851, be deemed to be documents of such a public nature as to be admissible in evidence on their mere production from the proper custody.

Treatise, p. 135. Copyholds.

The statute 27 Hen. 8, c. 16, referred to in note (*s*) on this page, is repealed (*u*).

Treatise, p. 138. "Enrolment."

The Mortmain and Charitable Uses Act, 1888, referred to in note (*t*) on this page, is amended by the Settled Land Act. These amendments are discussed hereafter (*v*) in connection with § 7 ("Sale of Charity Lands") of Chapter X. of the Treatise, which treats "Of Particular Titles."

The law on this subject is altered by sect. 184 of the Property Act, which enacts that in all cases where, after the commencement of the Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the Court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder.

Treatise, p. 143, n. (*h*). "Death in common calamity."

(*q*) Below, Section XVI.

(*r*) L. P. Act, 1922, Part V., s. 128, and Twelfth Schedule, above, Part II., Chapter II.

(*s*) Sect. 144, above, p. 87.

(*t*) Sect. 144A, introduced by the L. P. Act, 1924, above, p. 87.

(*u*) L. P. Act, 1924, s. 10, and Tenth Schedule, above, p. 4.

(*v*) Below, Section X.

Part IX. Sect. IV.

Treatise, p. 144, n. (*m*). "Evidence in questions of non-intercourse between husband and wife."

The law on this subject has been recently considered by the House of Lords in *Russell* v. *Russell*, (1924) A. C. 687, where it was held that the rule of law, that neither a husband nor a wife is permitted to give evidence of non-intercourse after marriage to bastardise a child born in wedlock, applies to proceedings instituted in consequence of adultery, and is not affected by sect. 3 of the Evidence Further Amendment Act, 1869 (stat. 32 & 33 Vict. c. 68), which makes the parties to such proceedings and the husbands and wives of such parties competent witnesses. That section is repealed, so far as it relates to the High Court, by the Supreme Court of Judicature (Consolidation) Act, 1925 (*w*), and replaced by sect. 198 of the latter Act.

Treatise, p. 184, n. (*m*). "Proceedings under the Legitimacy Declaration Act, 1858."

The Legitimacy Declaration Act, 1858, is repealed (*x*) and replaced by sect. 188 of the Supreme Court of Judicature (Consolidation) Act, 1925.

Treatise, p. 145, n. (*q*).

The Summary Jurisdiction (Married Women) Act, 1895 (stat. 58 & 59 Vict. c. 39), is amended by the Summary Jurisdiction (Married Women) Act, 1925.

Treatise, p. 147, and n. (*g*). "Will."

Sects. 62 and 64 of the Court of Probate Act, 1857 (stat. 20 & 21 Vict. c. 77), are repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*y*). Their effect, however, in regard to any real estate to which any person dying before the commencement (*z*) of that Act was entitled is preserved by sub-sects. (2) and (3) of sect. 175 of that Act and Part II. of the Fifth Schedule thereto (*a*).

Treatise, p. 147, and n. (*h*). "Will."

Part I. (sects. 1 to 5) of the Land Transfer Act, 1897, is, in regard to deaths occurring after the commencement (*b*) of the Administration Act, superseded (*c*) by the latter Act, or,

(*w*) Sect. 226, and Sixth Schedule.

(*x*) Except sect. 3, and except so far as the Act relates to Scotland; S. C. J. (Consolidation) Act, 1925, s. 226, and Sixth Schedule.

(*y*) Sect. 226, and Sixth Schedule.

(*z*) The 1st January, 1926.

(*a*) Above, Part VII., Chapter I., pp. 428, 429.

(*b*) The 1st January, 1926.

(*c*) But not, it seems, expressly repealed; see above, p. 5, note (*i*).

as regards such of the provisions of the latter Act as are repealed (*d*) by the Supreme Court of Judicature (Consolidation) Act, 1925, by the corresponding provisions of the last-mentioned Act. In particular, sect. 1 (3) of the Land Transfer Act, 1897, is, in regard to deaths so occurring, superseded and replaced by sect. 155 (*e*) of the Supreme Court of Judicature (Consolidation) Act, 1925.

(*d*) Above, p. 15.
(*e*) Above, Part VII., Chapter I., p. 427.

SECTION V.

OF ADVISING ON TITLE GENERALLY.

Treatise, Chap. V. pp. 149 to 178.

Effect of new conveyancing.

THIS chapter must be read subject to the changes in the system of conveyancing effected by the new legislation, and, in particular, to the provisions of sect. 10 of the Property Act (*a*) and sect. 110 of the Settled Land Act (*b*).

Treatise, p. 149. "The legal and equitable estate."

The statement on p. 149 of the Treatise as to what "the conveyancer must see" should now, perhaps, read that the conveyancer must see that the purchaser will get the legal estate free from all equitable interests which will not be overreached by the conveyance to the purchaser (*c*).

Treatise, p. 160. "Estate of grantee to uses."

In conveyances of freehold land executed after the commencement of the Property Act there cannot, of course, be an effectual limitation to a grantee to uses, so as to create legal limitations, as the Statute of Uses is repealed (*d*); though possibly an attempt so to create legal limitations might result in the creation of corresponding equitable interests.

Words of limitation.

As we have seen (*e*), in the case of conveyances executed after the commencement of the Property Act, words of limitation in a conveyance of freehold land are unnecessary (*f*), and such a conveyance without words of limitation, or any equivalent expression, will pass to the grantee the fee simple or other whole interest which the grantor had power to convey, unless a contrary intention appears in the conveyance.

(*a*) Above, Part III., Chapter XII.
(*b*) Above, Part IV., Chapter X.
(*c*) See, *e.g.*, L. P. Act, s. 43, above, p. 142.
(*d*) Above, Part III., Chapter I., p. 103.
(*e*) L. P. Act, s. 60, above, p. 104.
(*f*) Though, no doubt, desirable, to avoid any question of construction. As to the words necessary to *create* an entailed interest, see above, pp. 181 *et seq.*

It will be remembered that, under the Property Act, evidence of title in the possession of the vendor's mortgagee or trustee is in the same position, as regards the expense of procuring it, as evidence of title in the vendor's possession (*g*).

Treatise, p. 161. "Calling for evidence of facts."

Reference should here be made to the Addenda on p. xxxviii of Vol. II. of the Treatise in regard to the Agricultural Holdings Act, 1923, and the consequential amendments to this passage and in notes (*h*), (*i*), (*k*), (*l*) and (*m*).

Treatise, pp. 163-4 and nn. (*h*) (*i*) (*k*) (*l*) and (*m*). "Tenants' claims for compensation, &c."

Heriots attaching to land of freehold tenure are "manorial incidents" which in process of time, with or without compensation, will be extinguished under Part VI. of the Law of Property Act, 1922, as amended by the Law of Property (Amendment) Act, 1924 (*h*).

Treatise, p. 164, n. (*p*). "Freeholds may be subject to heriots."

For the repeal and consolidation of the enactments mentioned in note (*x*) on this page reference should be made to the above-mentioned Addenda on p. xxxviii. of Vol. II. of the Treatise.

"Statutory charges on lands." Treatise, p. 165, n. (*x*).

The Public Health Act, 1875, and the Private Street Works Act, 1892, are amended by the Public Health Act, 1925 (*i*).

Ib. nn. (*y*) and (*z*).

For sect. 160 of the Public Health Act, 1875, so far as it incorporates the Towns Improvement Clauses Act, 1847, reference should be made to sect. 19 (3) of the Public Health Act, 1925 (*i*).

Ib. p. 166, n. (*e*).

The provisions of the Housing, Town Planning, &c. Act, 1909, in regard to closing orders, and of the Housing of the Working Classes Act, 1890, as to demolition orders, are repealed and replaced by the Housing Act, 1925 (*k*).

Ib. nn. (*f*) (*g*).

Provisions for the protection of purchasers against "land charges" and "local land charges," including what may be

Treatise, p. 167. "Future statutory

(*g*) L. P. Act, s. 45 (4), above, p. 137.
(*h*) Above, Part II., Chapter III.
(*i*) 15 & 16 Geo. 5, c. 71.
(*k*) 15 & 16 Geo. 5, c. 14.

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called prospective local land charges, are contained in the Land Charges Act (*l*).

burdens on land."

Treatise, p. 167.

Party-walls.

The Property Act has introduced changes in the law as regards party walls (*m*).

Treatise, p. 173.

Requisition to get in an outstanding legal estate.

As we have seen (*n*), a stipulation contained in any contract for the sale or exchange of land made after the commencement of the Property Act, to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser or that no objection is to be taken on account of an outstanding legal estate will be void. It seems to follow that the usual express power to rescind could not be exercised on the ground of a purchaser insisting on the vendor getting in an outstanding legal estate, however expensive or troublesome it might be to comply with the requisition.

(*l*) Above, Part VI., and see the L. P. (Amendment) Act, 1926, above, p. 559.

(*m*) See above, Part III., Chapter V., p. 162.

(*n*) L. P. Act, s. 42 (3), above, p. 140.

SECTION VI.

OF STIPULATIONS LIMITING THE OBLIGATION TO SHOW A GOOD TITLE.

Treatise, Chapter VI. pp. 179 to 196.

REFERENCES in this chapter of the Treatise to the repealed "statutory conditions of sale" must be replaced by references to the substituted enactments in accordance with the Table on pp. 133 and 134 of this book; and thirty years must be substituted for forty years as the period of commencement of title which a purchaser may require (*a*).

Treatise, p. 179. "The statutory limitations."

As we have seen (*b*), *Patman* v. *Harland* (*c*) is overruled by sub-sect. (5) of sect. 44 of the Property Act, where the contract is made after the commencement of that Act.

Treatise, p. 181. "The effect of the above enactment."

It is thought that this passage (substituting "thirty" years for "forty" years) and the cases therein cited will apply equally to the substituted enactment, namely, sect. 45 (1) of the Property Act, subject to the qualifications introduced by the proviso to that enactment (*d*). Paragraph (ii) of that proviso appears to cover and confirm the decision in *Phillips* v. *Caldcleugh*, cited in this passage.

Phillips v. *Caldcleugh.*

It should be pointed out, however, that the decision in the case of *Nottingham Patent Brick and Tile Co.* v. *Butler*, discussed on pp. 182 and 183 of the Treatise, that, but for the misrepresentation by which he was induced to enter into the contract, the purchaser would have been bound at law by the contract, must be qualified by the power now given to the Court, where it refuses to grant specific performance of a contract, or in any action for the return of a deposit, to order the repayment of any deposit (*e*). This observation applies

(*a*) L. P. Act, s. 44 (1), above, p. 134.
(*b*) Above, p. 136.
(*c*) 17 C. D. 353.
(*d*) Above, pp. 136, 137.
(*e*) L. P. Act, s. 49 (2), above, p. 566.

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equally to the statement on p. 186 of the Treatise that, in the circumstances there stated, "a purchaser would not be allowed to rely upon an objection barred by the letter of the above enactment in proceedings to recover his deposit."

Treatise p. 189. "Difference in purchaser's position when resisting specific performance, and when seeking to recover deposit."

The whole of this passage and the cases therein referred to, as also the passage on p. 193 as to the limitations of the doctrine laid down in *Re Marsh and Earl Granville*, must be read subject to the power given to the Court as above mentioned, to order the return of any deposit (*f*); as must also the passages on p. 194, "Course to adopt in making requisitions," and "Conditions requiring assumptions of fact."

(*f*) L. P. Act, s. 49 (2), above, p. 566.

SECTION VII.

OF DEVOLUTION ON DEATH.

Treatise, Chapter VII. pp. 197 to 223.

(i) *Repeals.*

The following enactments referred to in this chapter of the Treatise are repealed, *but only as regards deaths occurring after the 31st December, 1925*, namely: the Dower Act, 1833; the Administration of Estates Act, 1833; the Intestates' Estates Act, 1890; "the Statutes of Distribution" (*i.e.*, 22 & 23 Chas. 2, c. 10; 1 Jas. 2, c. 17); sects. 14 to 18 of the Law of Property Amendment Act, 1859 (Lord St. Leonards' Act) (*a*); sect. 30 of the Conveyancing Act, 1881; and sect. 12 of the Conveyancing Act, 1911 (*b*).

The Inheritance Act, 1833, as amended by sect. 19 of the Law of Property Amendment Act, 1859, and such amending section are not repealed, but are "affected" in the manner indicated in the Ninth Schedule to the Law of Property (Amendment) Act, 1924 (*c*).

Law mainly unchanged as regards deaths before 1926.

As we have seen (*d*), the changes in the law as to devolution on death effected by the Administration Act, whether by express enactment or by the repeal of previous enactments, do not, with some few exceptions, apply in the case of deaths occurring *before* the commencement of that Act. The result is that the law, as stated in this chapter of the Treatise and the enactments and authorities referred to in that chapter, will, with some modifications, continue to apply to deaths so occurring.

(*a*) A. E. Act, s. 56, and Part I. of Second Schedule.
(*b*) L. P. Act, s. 207, and Seventh Schedule.
(*c*) Above, p. 5.
(*d*) Above, Part I., Chapter III., pp. 15, 16; Part VII., Chapter I., p. 424. As to the repeal and re-enactment of certain sections of the A. E. Act by the Supreme Court of Judicature (Consolidation) Act, 1925, see above, Part VII., Chapter I., Section i.

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Modifications of law applicable to such deaths.

As the changes effected by the Administration Act in regard to deaths occurring *after* the commencement of that Act have already been considered (*e*), commentary on this chapter of the Treatise will be directed mainly to pointing out which of the changes effected by that Act apply in regard to deaths occurring *whether before or after* such commencement.

Treatise, p. 212. "The proving executors may now sell or mortgage real estate."

Ib. p. 214. "The proving executor or executors may now exercise the statutory powers."

Right of proving executors to exercise powers.

The special powers conferred on proving executors by sect. 12 of the Conveyancing Act, 1911, which section is still in force, so far as it relates to deaths occurring before the commencement of the Property Act (*f*), are extended by the following section of the Administration Act, which, as will be seen, applies whether the testator died before or after the commencement of that Act:—

8.—(1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be as effectual as if all the persons named as executors had concurred therein.

(2) This section applies whether the testator died before or after the commencement of this Act.

Treatise, p. 212. "Personal representatives' assent to devise of real estate."

Ib. p. 215. "Executors' assent to devise of realty."

A. E. Act, s. 36.

Effect of assent or conveyance by personal representative.

Subs. (1).

Power to assent to

The law as to assents and conveyances by personal representatives (*g*) in regard to real estate (*g*) is considerably altered by sect. 36 of the Administration Act, which section applies to assents and conveyances made *after* the commencement of that Act, whether the testator or intestate died *before or after* such commencement (*h*), and, in cases to which it applies, supersedes sect. 3 (1) of the Land Transfer Act, 1897 (*i*).

Sub-sect. (1) of sect. 36 provides as follows:—

36.—(1) A personal representative may assent to the vesting, in any person who (whether by devise, bequest, devolution, appropriation or otherwise) may be entitled thereto, either beneficially or as a trustee

(*e*) Above, Part VII.

(*f*) Above, Part I., Chapter III., p. 17.

(*g*) For the meanings of "personal representative" and "real estate" in the A. E. Act, see Table of Definitions, above, Part I., Chapter VII.

(*h*) A. E. Act, s. 36 (12).

(*i*) All sections and sub-sections of the L. T. Act, 1897, which are referred to in this Chapter of the Treatise are comprised in Part I. of that Act, as to which see above, p. 5, note (*i*).

or personal representative, of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, including the statutory power to dispose of entailed interests, and which devolved upon the personal representative.

"real estate."

Under this sub-section a personal representative may *assent* to the vesting of any estate or interest in real estate, although it devolved upon a beneficiary by reason of intestacy. Under sect. 3 (1) of the Land Transfer Act, 1897, a conveyance was necessary to vest any estate or interest in land which so devolved, and an assent was operative only as regards land devised or bequeathed by a will.

"Devolution."

New powers to appropriate are conferred by sect. 41 of the Administration Act (*k*).

"Appropriation."

In the Administration Act "real estate," save as provided in Part IV. of the Act (*l*), means real estate, including chattels real, which by virtue of Part I. of the Act (*m*) devolves on the personal representative of a deceased person.

"Real estate."

The statutory power to dispose of entailed interests is conferred by sect. 176 of the Property Act (*n*).

"Entailed interests."

Sub-sect. (2) of sect. 36 is as follows:—

Subs. (2).

(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.

Operation of assent.

This sub-section must be read as qualified by sub-sects. (9) and (10) (*o*) of sect. 36 and by sect. 38 (*p*) of the Act.

By sub-sect. (3), the statutory covenants implied by a person being expressed to convey as personal representative may be implied in an assent in like manner as in a conveyance by deed.

Subs. (3).

Implied covenants in assent.

(*k*) Below, p. 599.
(*l*) Part IV. of the Act comprises sects. 45 to 52. See above, Part VII., Chapter V.
(*m*) Part I. of the Act comprises sects. 1 to 3. See above, Part VII., Chapter II.
(*n*) Above, Part III., Chapter IX., pp. 188, 189.
(*o*) Below, p. 592.
(*p*) Below, p. 593.

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Statutory forms of assent.

A form of "Assent by Personal Representative in favour of a Person absolutely entitled free from Incumbrances" is Form No. 8, and a form of "Assent by Personal Representatives in favour of Trustees for Sale" is Form No. 9 in the Fifth Schedule to the Property Act, which provides (*q*) that instruments in the form of, and using the expressions in the forms given in that schedule, or in the like form or using expressions to the like effect, shall in regard to form and expression be sufficient.

Subs. (4). Requisites of assent to vesting of "legal estate."

Sub-sect. (4) of sect. 36 is as follows:—

(4) An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.

Operation of such assent.

It will be seen that there are two requisites to the efficacy of an assent to the vesting of a "legal estate" (*r*). It must (1) be in writing, signed by the personal representative, and (2) name the person in whose favour it is given. If it complies with these requirements, it will operate to vest in the person so named the legal estate to which it relates.

Assent to vesting of "equitable interests."

Apparently an assent to the vesting of an "equitable interest" (*r*), *e.g.*, an estate in fee simple in remainder expectant on the death of a person living when the assent is given, need not be in writing, but may be proved or implied in any manner in which an assent not in writing might have been proved or implied before the commencement of the Administration Act.

Subs. (5). Endorsement, &c. of notice of assent or conveyance of "legal estate."

Sub-sect. (5) is as follows:—

(5) Any person in whose favour an assent or conveyance of a legal estate is made by a personal representative may require that notice of the assent or conveyance be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased, and that the probate or letters of administration be produced, at the like cost, to prove that the notice has been placed thereon or annexed thereto.

(*q*) L. P. Act, s. 206 (1).
(*r*) See above, Part III., Chapter I.

It will be noticed that this sub-section is confined to an assent or conveyance of a "legal estate" (*r*).

"Conveyance."

Sub-sects. (1) to (4) of sect. 36 relate only to an "assent," that is, to the mode of giving effect to a beneficial interest arising under a will or an intestacy. Sub-sect. (5) introduces the first reference to a "conveyance" (*s*).

Subss. (6) and (7). Protection of purchasers of a "legal estate."

Sub-sects. (6) and (7) of sect. 36 contain provisions for the protection of purchasers of a "legal estate" (*r*). In the Administration Act "purchaser" means a lessee, mortgagee or other person who in good faith acquires an interest in property for valuable consideration, also an intending purchaser, and "valuable consideration" includes marriage, but does not include a nominal consideration in money (*t*); but in sect. 36 (*u*) "purchaser" means a purchaser "for money or money's worth" (*x*).

Effect of subss. (6) and (7).

Sub-sects. (6) and (7) are to the effect that, *unless notice of a previous assent or conveyance affecting a legal estate has been placed on or annexed to the probate or administration* (*y*)—

Statement in writing negativing previous assent or conveyance.

(i) A statement in writing by the legal personal representative that he has not given or made an assent or conveyance in respect of *such* legal estate shall, *in favour of a purchaser*, but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative, be sufficient evidence that an assent or conveyance has not been given or made in respect of *such* legal estate (*z*);

Conveyance accepted on faith of such statement.

(ii) A conveyance by the personal representative of *such* legal estate *to a purchaser* accepted on the faith of such a statement shall (without prejudice as afore-

(*r*) See above, Part III., Chapter I.
(*s*) See Table of Definitions, above, Part I., Chapter VII.
(*t*) A. E. Act, s. 55 (1) (xviii).
(*u*) See sub-sect. (11), which also provides that this section shall not operate to impose any stamp duty in respect of an assent.
(*x*) See above, p. 198.
(*y*) For the meaning of "administration," see Table of Definitions, above, Part I., Chapter VII.
(*z*) A. E. Act, s. 36 (6).

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said) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative (*a*); and

(iii) An assent or conveyance by a personal representative in respect of *such* legal estate shall, *in favour of a purchaser*, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have *such* legal estate "conveyed" (*b*) to him, and upon the proper trusts, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon (*c*).

"In favour of a purchaser."

The above provisions "in favour of a purchaser" apply whether the purchase is direct from the personal representative or from a person claiming under the relative assent or conveyance.

"The proper trusts."

These words relate to an assent in favour of a trustee (*d*).

Subss. (9) and (10). Qualifications of assent or conveyance. Saving of duties and debts.

Sub-sects. (9) and (10) (*e*) of sect. 36 qualify as follows the operation or effect of an assent or conveyance:—

(9) An assent or conveyance given or made by a personal representative shall not, *except in favour of a purchaser of a legal estate* (*f*), prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against any duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

Security for same.

(10) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such

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(*a*) A. E. Act, s. 36 (6). A personal representative making a false statement, in regard to any such matter, shall be liable in like manner as if the statement had been contained in a statutory declaration; *ibid.*
(*b*) See Table of Definitions, above, Part I., Chapter VII.
(*c*) A. E. Act, s. 36 (7).
(*d*) See A. E. Act, s. 36 (1), above, p. 588.
(*e*) For sub-sect. (8), see below, p. 595.
(*f*) The *italics* are the writer's.

duties, debt or liability if reasonable arrangements have been made for discharging the same; and an assent may be given subject to any legal estate or charge by way of legal mortgage (*g*).

Such operation or effect is further qualified by the following section of the Administration Act:— A. E. Act, s. 38.

38.—(1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested. Right to follow property and powers of the Court in relation thereto.

(2) Notwithstanding any such assent or conveyance the Court may, on the application of any creditor or other person interested,—

(a) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the Court considers requisite for the purpose of giving effect to the rights of the persons interested;

(b) declare that the person, not being a purchaser, in whom the property is vested is a trustee for those purposes;

(c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;

(d) make any vesting order, or appoint a person to convey in accordance with the provisions of the Trustee Act, 1925 (*h*). 15 Geo. 5. c. 19.

(3) This section does not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the testator or intestate died before or after the commencement of this Act.

In this section "purchaser" is not expressly confined to a purchaser for money or money's worth, but probably has the same meaning as in sect. 36 (*i*). "Purchaser."

Sect. 3 (2) (*k*) of the Land Transfer Act, 1897, is superseded by sect. 43 of the Administration Act, which, it will be seen, applies whether the testator or intestate died before or after the commencement of that Act:— Treatise. p. 213. "The Court may order them to convey to the devisee or heir."

43.—(1) A personal representative, before giving an assent or making a conveyance in favour of any person entitled, may permit that person to take possession of the land, and such possession shall not prejudicially A. E. Act, s. 43. Obligations of personal

(*g*) For the meaning of "charge by way of legal mortgage," see Table of Definitions, above, Part I., Chapter VII.

(*h*) Above, Part V., Chapter VI., Section ii., pp. 383 *et seq.*

(*i*) Above, p. 591.

(*k*) See above, p. 588, note (*i*).

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representative as to giving possession of land and powers of the Court.

affect the right of the personal representative to take or resume possession nor his power to convey the land as if he were in possession thereof, but subject to the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.

(2) Any person who as against the personal representative claims possession of real estate (*l*), or the appointment of a receiver thereof, or a conveyance thereof, or an assent to the vesting thereof, or to be registered as proprietor thereof under the Land Registration Act, 1925, may apply to the Court for directions with reference thereto, and the Court may make such vesting or other order as may be deemed proper, and the provisions of the Trustee Act, 1925, relating to vesting orders and to the appointment of a person to convey (*m*), shall apply.

(3) This section applies whether the testator or intestate died before or after the commencement of this Act.

Treatise, p. 214, n. (*a*). "Order of application of dead man's assets in payment of his debts."

The order of the application of the assets of a deceased person in payment of his funeral and testamentary expenses and debts is materially altered by the Administration Act in the case of a person dying after the commencement of that Act (*n*).

Treatise, p. 215. "Renunciation of probate."

The following sections of the Administration Act, both of which are retrospective, may be read in conjunction with this passage:—

A. E. Act, ss. 6, 37.

Withdrawal of renunciation.

6.—(1) Where an executor who has renounced probate has been permitted, whether before or after the commencement of this Act, to withdraw the renunciation and prove the will, the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other personal representative who has previously proved the will or taken out letters of administration, and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.

(2) This section applies whether the testator died before or after the commencement of this Act.

Validity of conveyance not affected by revocation of representation.

37.—(1) All conveyances of any interest in real or personal estate made to a purchaser either before or after the commencement of this Act by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation, either before or after the commencement of this Act, of the probate or administration.

(2) This section takes effect without prejudice to any order of the Court made before the commencement of this Act, and applies whether the testator or intestate died before or after such commencement.

(*l*) For the meaning of "real estate," see above, p. 589.
(*m*) See above, p. 593, n. (*h*).
(*n*) See above, Part VII., Chapter IV., pp. 444 *et seq.*

Since the commencement of the Administration Act an assent to the vesting of a "legal estate" must, as we have seen (*o*), be express. Moreover, since such commencement, an assent may be given to the vesting of a beneficial interest in land, whether such interest arises under a testamentary gift or under an intestacy.

Treatise, p. 216. "Assent may be express or implied or presumed."

Having regard to the provisions of sect. 43 (1) of the Administration Act (*p*), the fact of the personal representative putting the beneficiary in possession or allowing him to receive the rents and profits of the land to which the beneficiary is entitled is not, if such giving of possession have taken place since the commencement of that Act, conclusive evidence of an implied assent even in the case of an "equitable interest." Save as aforesaid, it would seem that an assent to the vesting of an "equitable interest" may be implied or presumed in like circumstances as before such commencement.

Effect of giving possession.

The law as to the effect on a purchaser's title of notice that no funeral or testamentary expenses or debts or legacies of the deceased remain unpaid, where the purchase is completed after the commencement of the Administration Act and is a purchase for money or money's worth of a legal estate from the personal representative of the deceased, is altered by sub-sect. (8) of sect. 36 of the Administration Act. That sub-section is as follows:—

Treatise, pp. 216, 217. Notice of debts, &c.

(8) A conveyance of a legal estate by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral, and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for.

The use of the word "only" indicates that, if there be any circumstance, such as collusion between the vendor and the purchaser, evidencing want of good faith in the transaction, the conveyance will be liable to be set aside.

Notice *only*.

Having regard to the provisions of sub-sects. (5) and (6) (*q*) of the last-mentioned section, a purchaser of a "legal estate"

Inquiry as to assent.

(*o*) A. E. Act, s. 36 (4), above, p. 590.
(*p*) Above, p. 593.
(*q*) Above, pp. 590, 591.

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Procedure on completion.

from a personal representative should, *on completion,* require (1) the production of the probate or letters of administration, in order to satisfy himself that no notice of a previous assent or conveyance affecting *such* legal estate is endorsed thereon or annexed thereto; (2) delivery to himself of a statement in writing signed by the personal representative that the latter has not given or made an assent or conveyance in respect of *such* legal estate; and (3) notice of the conveyance to himself of *such* legal estate, immediately after the execution thereof, to be endorsed on or annexed to the probate or letters of administration.

Treatise, p. 217, and n. (*c*).

"Conveyance to heir or devisee subject to charge."

It is thought that, where the personal representative assents to the vesting in the person "entitled thereto" (*r*) of an "estate or interest in real estate" (*r*) and so assents (1) subject to a charge for any outstanding "duties, debt or liability" (*s*), and (2) after having complied with the requirements of sect. 27 of the Trustee Act (*t*) as to advertisements and searches, the principle of *In re Cary and Lott's Contract,* (1901) 2 Ch. 463, will apply; and the charge will not extend to debts of which the personal representative had no notice at the date of the assent, because the right to follow the property, which is saved by sub-sect. (2) of the last-mentioned section and by sect. 38 of the Administration Act, is not available against a purchaser.

Treatise, p. 217.

"Assent to devise of lands in settlement."

Where a legal estate in land is vested in a personal representative as such and is "settled land," that is, land subject to a "settlement," it will be the duty of the personal representative to give effect to the settlement by executing a "principal vesting deed" or a "vesting assent" (*u*).

Conveyance in lieu of assent.

Statutory form.

It is thought that a personal representative may effect the vesting in the person "entitled thereto" (*x*) of an "estate or interest in real estate" (*x*) by means of a conveyance in any case in which he could effect such vesting by means of an assent; and a form of "Conveyance by Personal Represen-

(*r*) See A. E. Act, s. 36 (1), above, p. 588.
(*s*) See *ibid.* (9), (10), above, p. 592.
(*t*) Above, Part V., Chapter IV., Section ii., p. 369.
(*u*) Above, Part IV., Chapter IV., pp. 283 to 288, 291.
(*x*) See A. E. Act, s. 36 (1), above, p. 588.

tatives of a Fee Simple reserving thereout a Term of Years absolute for giving Legal Effect to a Mortgage" is Form No. 5 in the Fifth Schedule to the Property Act (*y*). This is clearly not a form of conveyance to a purchaser and appears to be intended for use under sub-sect. (10) (*z*) of sect. 36 of the Administration Act.

Treatise, pp. 216, 223.

Sale of land by administrator for purpose of division.

Since the commencement of the Administration Act the administrator of an intestate who died before such commencement has had the powers conferred on personal representatives by sects. 39 and 40 of that Act. These powers clearly include power to sell freehold or leasehold land for purposes of division.

A. E. Act, ss. 39, 40.

Sects. 39 and 40 of that Act are as follows:—

Powers of management.

39.—(1) In dealing with the real and personal estate of the deceased his personal representatives shall, for purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have—

(i) the same powers and discretions, including power to raise money by mortgage or charge (whether or not by deposit of documents), as a personal representative had before the commencement of this Act, with respect to personal estate vested in him, and such power of raising money by mortgage may in the case of land be exercised by way of legal mortgage (*a*); and

(ii) all the powers, discretions and duties conferred or imposed by law on trustees holding land upon an effectual trust for sale (including power to overreach equitable interests and powers as if the same affected the proceeds of sale (*b*)); and

(iii) all the powers conferred by statute on trustees for sale (*c*), and so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect, or be varied or rescinded by him, and, in the case of a contract entered into by a predecessor, as if it had been entered into by himself.

(2) Nothing in this section shall affect the right of any person to require an assent or conveyance to be made.

(*y*) See above, p. 590.
(*z*) Above, p. 592.
(*a*) For the meaning of "legal mortgage," see Table of Definitions, above, Part I., Chapter VII.
(*b*) See L. P. Act, s. 2, above, Part III., p. 203; s. 27, *ibid.* p. 170.
(*c*) See L. P. Act, s. 28, *ibid.* p. 170.

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(3) This section applies whether the testator or intestate died before or after the commencement of this Act.

Powers of personal representative for raising money, &c.

40.—(1) For giving effect to beneficial interests the personal representative may limit or demise land for a term of years absolute, with or without impeachment for waste, to trustees on usual trusts for raising or securing any principal sum and the interest thereon for which the land, or any part thereof, is liable, and may limit or grant a rentcharge for giving effect to any annual or periodical sum for which the land or the income thereof or any part thereof is liable.

(2) This section applies whether the testator or intestate died before or after the commencement of this Act.

Treatise, pp. 218, 219, and n. (*m*).

Contingent remainders created before 1926.

As from the commencement of the Property Act and by virtue of sect. 1 of that Act and Part I. of the First Schedule thereto (*d*), a *legal* contingent remainder subsisting or capable of taking effect immediately before such commencement was converted into an "equitable interest," without liability to fail or to lose priority over other equitable interests by reason of such conversion. Any *equitable* contingent remainders subsisting or capable of taking effect immediately before such commencement would appear to be unaffected by the Property Act (*e*).

Validity and effect of, how determined.

It appears, therefore, that the validity or effect of a contingent remainder, whether legal or equitable, subsisting or capable of taking effect immediately before the commencement of the Property Act, must be determined by the law in force immediately before such commencement, and, as regards any such legal contingent remainder, without regard to the fact of its conversion into an "equitable interest."

Contingent Remainders Act, 1877.

The Contingent Remainders Act, 1877, is repealed by, and as from the commencement of, the Law of Property (Amendment) Act, 1924, as being an enactment which, as regards England and Wales, is "rendered obsolete by the principal Act" (*f*).

Treatise, p. 220.

"Estates tail."

"Entailed interests," including estates tail created before the commencement of the Property Act, if suffered to descend,

(*d*) Above, Part III., Chapter I., Section i.
(*e*) See L. P. Act, s. 4, above, Part III., Chapter IX., p. 195.
(*f*) L. P. Act, 1924, s. 10, and Tenth Schedule, above, p. 4.

are not liable for the debts or other liabilities of the deceased tenant in tail (*g*).

Treatise, p. 222.

Sale or mortgage to raise estate duty.

It seems that where, after the commencement of the Trustee Act, personal representatives purport to sell or mortgage freehold land under the statutory power to raise the money to pay the estate duty thereon, the purchaser or mortgagee is not concerned to see that such money is wanted, or that no more than is wanted is raised, or otherwise as to the application thereof (*h*).

A. E. Act, s. 41.

Sect. 41 of the Administration Act contains somewhat long and elaborate provisions conferring powers of appropriation on personal representatives. The section supersedes the provisions of sect. 4 (1) of the Land Transfer Act, 1897 (*i*), and applies whether the deceased died intestate or not, and whether before or after the commencement of the Administration Act.

The section is as follows:—

Powers of personal representative as to appropriation.

41.—(1) The personal representative may appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, whether settled or not, as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased:

Provided that—

(i) an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest;

(ii) an appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the following consents:—

(a) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;

(b) when made in respect of any settled legacy, share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income:

If the person whose consent is so required as aforesaid

(*g*) L. P. Act, s. 176, above, p. 188.
(*h*) T. Act, s. 17, above, Part V., Chapter IV., p. 364.
(*i*) See above, p. 588, note (*i*).

is an infant or a lunatic or defective, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, committee or receiver, or if, in the case of an infant, there is no such parent or guardian, by the Court on the application of his next friend;

(iii) no consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;

(iv) if no committee or receiver of a lunatic or defective has been appointed, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the lunatic or defective;

(v) if, independently of the personal representative, there is no trustee of a settled legacy, share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy, share or interest, provided that the appropriation is of an investment authorised as aforesaid.

(2) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.

(3) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.

(4) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(5) The personal representative shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot be found or ascertained at the time of appropriation, and of any other person whose consent is not required by this section.

(6) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and takes effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.

(7) If after any real estate has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite consents, if any, had been given.

(8) In this section, a settled legacy, share or interest includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation, also an annuity, and "purchaser" means a purchaser for money or money's worth.

(9) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, including the statutory power to dispose of entailed interests (*k*), and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

A. E. Act, s. 42.

The only other section (not already mentioned) of the Administration Act which applies to persons dying, whether before or after the commencement of that Act, is sect. 42, which provides as follows:—

Power to appoint trustees of infants' property.

42.—(1) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Act (in this subsection called "the deceased") to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, legacy, residue or share for the infant, and to be trustees of any land devised or any land being or forming part of such residue or share for the purposes of the Settled Land Act, 1925, and of the statutory provisions relating to the management of land during a minority (*l*), and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed.

15 Geo. 5. c. 18.

On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue, or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any authorised investment.

(2) Where a personal representative has before the commencement

(*k*) See L. P. Act, s. 176, above, Part III., Chapter IX., p. 188.
(*l*) S. L. Act, s. 102, above, Part IV., Chapter IX., p. 341.

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of this Act retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the Court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into Court.

Effect of s. 42.

This section meets the difficulty caused by the rule laid down in *In re Salaman*, (1907) 2 Ch. 46, and *In re Solomons*, (1920) 1 Ch. 290, that, where a vested legacy is presently payable, but owing to the infancy of the legatee the legacy cannot be paid over, the executor can discharge himself and free the residue only by paying the legacy into Court.

SECTION VIII.

OF NOTICE OF TRUSTS AND SALES BY TRUSTEES.

Treatise, Chapter VIII. pp. 224 to 275.

(i) Repeals and Re-enactments (*a*).

Repealed enactment.	Substituted enactment.
21 Hen. 8, c. 4 (*b*).	
22 & 23 Vict. c. 35, s. 23 (*c*).	
C. Act, 1881, s. 52	L. P. Act, s. 155.
s. 61	s. 111.
s. 66	s. 182.
C. Act, 1882, s. 3	s. 199.
s. 6	s. 156.
C. Act, 1911, s. 8 (1) (4)	T. Act, s. 18 (2) (4).
(2) (3) (5)	Not re-enacted.
s. 9	L. P. Act, s. 31.
s. 10 (1)	s. 32 (1).
(2)	(2).
(3) (4)	s. 23.
s. 13	s. 112.
S. L. Act, 1882, s. 2 (1)	S. L. Act, s. 1 (1).
(2)	(4).
(3)	s. 2.
(4)	Not re-enacted.
(5)	S. L. Act, s. 19 (1).
(6)	(2).
(7)	(4).
(8)	s. 30 (1) (i) (ii).
(9)	s. 117 (1) (ii).
(10) (*d*).	

(*a*) See Explanatory Note, above, p. 562.

(*b*) This statute is repealed by the A. E. Act, s. 56, and Part I. of Second Schedule, as regards deaths occurring after the commencement of that Act, and is not re-enacted.

(*c*) This enactment is repealed by the T. Act, s. 70, and Schedule, and is not re-enacted.

(*d*) See Table of Definitions, above, Part I., Chapter VII.

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Repealed enactment.	Substituted enactment.
S. L. Act, 1882, s. 3	S. L. Act, s. 38.
s. 6	s. 41.
s. 9 (1)	s. 45 (1) (i) (iii).
(2)	(2).
s. 10	s. 46.
s. 11	s. 47.
s. 21	s. 73 (1).
(ii)	(ii).
s. 56 (1)	s. 108 (1).
(2)	(2).
s. 57	s. 109.
s. 58	s. 20.
S. L. Act, 1884, s. 6	Not re-enacted.
S. L. Act, 1890, s. 4	S. L. Act, s. 104 (11).
s. 11	s. 71 (1) (i) (ix), (2).
T. Act, 1893, s. 8 (1)	T. Act, s. 8 (1).
(2)	(2).
(3)	(3).
(4)	(4).
s. 10 (3)	s. 36 (7).
s. 13 (1)	s. 12 (1).
(2)	Not re-enacted.
(3)	Not re-enacted.
s. 14	T. Act, s. 13.
s. 15	Not re-enacted.
s. 20	T. Act, s. 14 (1).
s. 22 (1)	s. 18 (1).
(2)	Not re-enacted.
s. 37	T. Act, s. 43.
s. 44 / T. Act, 1894, s. 3	L. P. Act, s. 92.
T. Act, 1893, s. 50 (*e*).	

(ii) Substantive Amendments.

§ 1.—*Of Notice of Trusts.*

Treatise, p. 226. "Recitals of title in equity."

The principle, illustrated by the cases of *Re Chafer and Randall's Contract* and *Re Soden and Alexander's Contract*, cited in this passage, which requires a purchaser to accept as correct a recital in a conveyance forming part of the title that

(*e*) See Table of Definitions, above, Part I., Chapter VII.

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In re Balen and Shepherd's Contract.

the grantee has become entitled in equity to the property being conveyed, rests upon the grantor being the person who on the face of the abstract was the legal and beneficial owner of the property, so that the recital operates as an admission binding on him. In a case, therefore, where an abstract of title traced the absolute legal and beneficial title into an owner who died intestate, and after his death his administratrix purported voluntarily to convey the property to X. (who was not the heir-at-law of the intestate) by a deed containing a recital that X. had become entitled in equity to the property, it was held that the purchaser was entitled to go behind the recital and require it to be shown how X. had become entitled; for the administratrix could not by her admission bind the heir-at-law, on whom, upon the face of the abstract, the beneficial interest in the property had devolved (*a*).

Treatise, p. 227, and nn. (*l*) & (*m*).

"Where a *document* declaring a trust is disclosed."

The case of *Re Blaiberg and Abrahams*, (1899) 2 Ch. 340, cited in this passage, appears to be overruled by the new enactment embodied in sect. 113 of the Property Act (*b*).

Treatise, pp. 228 to 231.

Death duties on death of one or more joint owners or joint mortgagees.

Protection of purchasers from liability for death duties.

This passage must be read in conjunction with sect. 17 of the Property Act (*c*) and, in particular, with sub-sect. (1) of that section, which provides that, where a charge in respect of death duties is not registered as a land charge (*d*), a "purchaser" (*e*) of a "legal estate" (*e*) shall take free therefrom, unless the charge attached before the commencement of that Act and the purchaser had "notice" (*e*) of the facts giving rise to the charge.

Registered charge for death duties.

Where a charge in respect of death duties *is* registered as a land charge, a purchaser of the legal estate affected will be entitled to require the registration to be cancelled, free of expense to the purchaser (*f*).

Treatise, p. 233.

"Restriction on constructive notice."

The section of the Conveyancing Act, 1882, which is set out on this page of the Treatise, is re-enacted, with an important

(*a*) *In re Balen and Shepherd's Contract*, (1924) 2 Ch. 365.
(*b*) Set out above, Part III., Chapter III., p. 131.
(*c*) This section does not apply to registered land (sub-sect. 5). See further as to death duties, below, Section XXI.
(*d*) See L. C. Act, s. 10 (1), Class D (i), above, Part VI., Chapter VI., p. 412.
(*e*) See Table of Definitions, above, Part I., Chapter VII.
(*f*) L. P. Act, s. 43, above, Part III., Chapter IV., p. 142.

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amendment, by sect. 199 of the Property Act. The latter section is set out in the chapter of this book which treats of "Purchasers and Notice" (*g*).

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§ 2.—*Of Sales by Trustees.*

Treatise, p. 241. "Sales by trustees."

Land held on simple trust for one person.

Where a legal estate in land is held by A. under a simple trust for B. in such circumstances that B. is "entitled to require" A. to convey the legal estate to him at any time, subject only to the payment of A.'s costs, if any, it is still the law that A. cannot sell or otherwise deal with the land without B.'s consent.

Land so held at commencement of L. P. Act.

A legal estate so held by A. immediately after the commencement of the Property Act vested automatically in B. by virtue of Part II. of the First Schedule to that Act (*a*).

Land held on simple trust for two or more as tenants in common.

Land so held at commencement of L. P. Act.

Cannot be so held after such commencement.

Since the commencement of the Property and Settled Land Acts an undivided share in land can only take effect behind a trust for sale (*b*). Accordingly, where, immediately before the commencement of the Property Act, land was held upon a simple trust for two or more persons in undivided shares vested in possession, the entirety of the land, on the commencement of that Act, vested automatically in a trustee or trustees upon the "statutory trusts" by virtue of Part IV. of the First Schedule to that Act (*c*); and any attempt after the commencement of that Act to dispose of land in favour of persons in undivided shares has the effect of subjecting the entirety of the land to the "statutory trusts" (*d*).

Trust for sale, statutory or express.

Since the commencement of the Property Act land may be subject to a trust for sale, either as being, by operation of

(*g*) Above, Part III., Chapter X., p. 199. See also T. Act, s. 28, above, Part V., Chapter IV., p. 370.

(*a*) Above, Part III., Chapter II., pp. 107 *et seq.* See also L. P. Act, 1926, s. 7, and Schedule, amending paragraph 3 of L. P. Act, Schedule I., Part II., above, p. 556.

(*b*) S. L. Act, s. 36 (4), above, Part III., Chapter V., p. 160.

(*c*) Above, Part III., Chapter V., Section ii., pp. 151 *et seq.* Part IV. of the First Schedule to the L. P. Act must be read as amended by L. P. Act, 1926, s. 7, and Schedule, above, p. 557.

(*d*) *Ibid.*, Section iii., p. 159.

law, subject to the "statutory trusts" (*e*), or as being the subject of an express "disposition on trust for sale" (*f*). In neither case can the beneficiaries, even if all *sui juris* and entitled absolutely, require the land to be conveyed to them as tenants in common in undivided shares.

Definitions.

In most of the Consolidation Acts, "trust for sale" means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without power at discretion to postpone the sale; "trustees for sale" mean the persons (including a personal representative) holding land on trust for sale; and "power to postpone a sale" means power to postpone in exercise of a discretion (*g*).

Treatise, p. 242. "Trust for sale with all convenient speed."

In every trust for sale, created whether before or after the commencement or by virtue of the Property Act, a "power to postpone sale" is implied unless a contrary intention appears; and where there is a power to postpone the sale, then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale will not be liable in any way for postponing the sale, in the exercise of their discretion, for any indefinite period; nor will a "purchaser" (*g*) of a "legal estate" (*g*) be concerned in any case with any directions respecting the postponement of a sale (*h*).

Treatise, p. 244. "Election to take the property as real estate."

Where the net proceeds of sale of land held on trust for sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares, they cannot elect to take the land as land in undivided shares; for "land" does not include an undivided share thereof (*i*), and a legal estate is not capable of subsisting or of being created in an undivided share in land (*k*); but, in such a case, the trustees for sale may arrange and give effect to a partition of

(*e*) Namely, a trust for sale, &c. See L. P. Act, s. 35, above, p. 152, as amended by L. P. Act, 1926, s. 7, and Schedule, above, p. 553.

(*f*) Above, Part III., Chapter VII., and L. P. Act, 1926, s. 7, and Schedule, amending L. P. Act, ss. 26, 27 and 28, above, p. 552.

(*g*) See Table of Definitions, above, Part I., Chapter VII.

(*h*) L. P. Act, s. 25, above, Part III., Chapter VII., p. 169.

(*i*) See Table of Definitions, above, Part I., Chapter VII.

(*k*) L. P. Act, s. 1, above, Part III., Chapter I., p. 98.

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the land remaining unsold or any part thereof (*l*); and possibly, in the like case, the beneficiaries may effect a partition by agreement (*m*).

Treatise, p. 245. "Power to postpone sale."

As we have seen (*n*), a power to postpone the sale is now implied in every trust for sale, whether express or statutory, unless, in the case of an express trust for sale, a contrary intention appears.

Treatise, p. 251. Implied stipulations.

Sect. 15 (*o*) of the Trustee Act, 1893, authorised a trustee who was a vendor or a purchaser to sell or buy without excluding the application of sect. 2 of the Vendor and Purchaser Act, 1874 (*p*). The stipulations implied in contracts by virtue of the latter section (*p*) or the Conveyancing Act, 1881 (*q*), are re-enacted, with some modifications, by sects. 44 and 45 of the Property Act (*r*); and by sect. 182 (*s*) of the last-mentioned Act trustees are expressly empowered to sell subject to any of the stipulations implied in contracts by virtue of that Act.

Extension of powers of trustees for sale. L. P. Act, s. 28 (1).

It is provided by sub-sect. (1) of sect. 28 (*t*) of the Property Act that trustees for sale shall, in relation to land or to manorial incidents and to the proceeds of sale, have all the powers of a tenant for life (*u*) and the trustees of a settlement under the Settled Land Act, including, in relation to the land, the powers of management conferred by that Act during a minority (*v*): and (subject to any express trust to the contrary) all capital money arising under the said powers will, unless paid or applied for any purpose authorised by the

(*l*) L. P. Act, s. 28 (3), above, Part III., Chapter VII., p. 171.

(*m*) See above, p. 158, note (*v*).

(*n*) Above, p. 607.

(*o*) Repealed and not re-enacted. See the Table, above, p. 604.

(*p*) Repealed, L. P. Act, s. 207, and Seventh Schedule.

(*q*) Repealed, with some exceptions. See above, p. 17.

(*r*) Above, Part III., Chapter IV.

(*s*) Replacing sect. 66 of the C. Act, 1881.

(*t*) Set out above, Part III., Chapter VIII., pp. 170, 171. This section applies to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of the Property Act, sub-s. (5).

(*u*) See S. L. Act, Part II., above, Part VI., Chapter V.

(*v*) As to the words to be inserted after "minority," see L. P. Act, 1926, s. 7, and Schedule, above, p. 553. As to the powers of management during a minority, see S. L. Act, s. 102, above, p. 341.

Settled Land Act (*w*), be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

Land acquired under extended powers. Consent to exercise of extended powers. Overriding effect of exercise of powers.

The same sub-section further provides that all land acquired thereunder shall be conveyed to the trustees on trust for sale; and that the powers thereby conferred shall be exercised with such consents (if any) as would have been required on a sale under the trust for sale (*x*), and when exercised will operate to overreach any equitable interests or powers which are, by virtue of the Property Act or otherwise, made to attach to the net proceeds of sale as if created by a trust affecting those proceeds.

Treatise, pp. 251, 252. "Trustees must sell for money."

The effect of this extension of the powers of trustees for sale is materially to alter the law as stated in this passage of the Treatise.

Trustees for sale may now sell, (i) for a rent;

For example, trustees for sale now have power, in accordance with the provisions of sect. 39 (*y*) of the Settled Land Act, (i) to sell in consideration wholly or partially of a perpetual rent, or a terminable rent consisting of principal and interest combined, payable yearly or half-yearly, to be secured upon the land sold, or the land to which the easement, right or privilege sold is to be annexed in enjoyment, or an adequate part thereof (*z*); and (ii) on a sale to any company incorporated by special Act of Parliament or by provisional order confirmed by Parliament or by any other order, scheme or certificate having the force of an Act of Parliament, to sell in consideration, wholly or in part, of fully-paid "securities" (*a*) of the company (*b*).

(ii) for fully paid securities of certain companies.

Power of exchange.

Trustees for sale, moreover, have now the same powers of exchange as a tenant for life (*c*).

(*w*) See S. L. Act, Part III., above, Part IV., Chapter VI.
(*x*) As to such consents, see L. P. Act, s. 26, above, p. 169, as amended by the L. P. Act, 1926, s. 7, and Schedule, above, p. 552.
(*y*) Above, Part IV., Chapter V., pp. 313, 314.
(*z*) S. L. Act, s. 39 (2).
(*a*) See Table of Definitions, above, Part I., Chapter VII.
(*b*) S. L. Act, s. 39 (5).
(*c*) *Ibid.*, ss. 38 (iii), 40.

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Power to leave purchase-money on mortgage. T. Act, s. 10 (2).

Sub-sect. (2) of sect. 10 of the Trustee Act provides as follows:—

(2) On a sale of land for an estate in fee simple or for a term having at least five hundred years to run by trustees or by a tenant for life (*c*) or statutory owner (*c*), the trustees, or the tenant for life or statutory owner on behalf of the trustees of the settlement, may, where the proceeds are liable to be invested, contract that the payment of any part, not exceeding two-thirds, of the purchase money shall be secured by a charge by way of legal mortgage (*c*) or a mortgage by demise or sub-demise for a term of at least five hundred years (less a nominal reversion when by sub-demise), of the land sold, with or without the security of any other property, such charge or mortgage, if any buildings are comprised in the mortgage, to contain a covenant by the mortgagor to keep them insured against loss or damage by fire to the full value thereof.

The trustees shall not be bound to obtain any report as to the value of the land or other property to be comprised in such charge or mortgage, or any advice as to the making of the loan, and shall not be liable for any loss which may be incurred by reason only of the security being insufficient at the date of the charge or mortgage; and the trustees of the settlement shall be bound to give effect to such contract made by the tenant for life or statutory owner.

Effect of subs. (2).

It is not clear whether the effect of this sub-section is to *restrict* the power to leave purchase-money on mortgage to the cases therein mentioned.

Treatise, p. 252 and n. (*m*). Enlargement of powers by the Court.

As we have seen (*d*), the extraordinary jurisdiction assumed by the Court in *In re New*, (1901) 2 Ch. 534, is now superseded by the express power given to the Court by sect. 57 of the Trustee Act to sanction *any* transaction which "is, in the opinion of the Court, expedient."

Treatise, p. 252. Mortgages and leases.

By virtue of sect. 28 (1), above referred to (*e*), of the Property Act, trustees have now the same powers as a tenant for life under the Settled Land Act of raising money by way of mortgage (*f*) and of leasing (*g*).

Treatise, p. 254 and nn. (*e*) and (*g*).

By virtue of the same section, trustees for sale (1) may sell, exchange or lease the surface apart from the minerals or the

(*c*) See Table of Definitions, above, Part I., Chapter VII.
(*d*) Above, Part V., Chapter VI., pp. 387, 388.
(*e*) P. 608.
(*f*) S. L. Act, s. 71. See above, Part IV., Chapter V., p. 325.
(*g*) *Ibid.*, ss. 41 to 48. See above, *ibid.*, p. 315.

"Timber and minerals."

minerals apart from the surface (*h*); and (2) may sell land subject to a stipulation that all or any of the "timber" or "fixtures" shall be taken by the purchaser at a valuation, and the amount of the valuation will form part of the price of the land, and will be capital money accordingly (*i*).

Treatise, p. 254 and nn. (*e*) and (*g*).
T. Act, 1893, s. 44; T. Act, 1894, s. 3.

The power given to the Court by sect. 44 of the Trustee Act, 1893, to sanction the sale by a *trustee* of the land with an exception or reservation of any minerals, or of the minerals separately from the rest of the land, was extended by sect. 3 of the Trustee Act, 1894, to any *other person*. These two sections are repealed by the Property Act (*k*) and re-enacted, in effect, by sect. 92 of that Act in regard to a sale by a mortgagee where his power of sale does not extend to the purposes mentioned in that section (*l*).

Treatise, p. 254.
"Sale by executors of surface apart from mines."

In regard to deaths occurring after the commencement of the Administration Act (*m*), the provisions of Part I. (sects. 1 to 5) of the Land Transfer Act, 1897, are superseded (*n*) by the corresponding provisions of the Administration Act, whereof sect. 2 (*o*) takes the place of sect. 2 (2) of the Land Transfer Act, 1897. There seems no doubt that the decision in *In re Chaplin and Staffordshire Potteries Waterworks Co.'s Contract*, (1922) 2 Ch. 824, that legal personal representatives have power to sell separately the surface and minerals of land vested in them as such, will apply to land vested in the personal representatives of a person dying after the commencement of the Administration Act.

Personal representatives as trustees for sale.

Personal representatives are trustees for sale of any real estate (*p*) as to which a person so dying dies intestate (*q*); and

(*h*) S. L. Act, s. 50, re-enacting S. L. Act, 1882, s. 17 (1).
(*i*) S. L. Act, s. 49 (2), above, Part IV., Chapter V., p. 317.
(*k*) L. P. Act, s. 207, and Seventh Schedule. The *whole* of the T. Act, 1893, and sects. 1 and 4 of the T. Act, 1894, are repealed by the T. Act, s. 70, and Second Schedule.
(*l*) Where the mortgage deed is executed after the 31st December, 1911, the statutory power of sale includes power to sell the land and the minerals separately: L. P. Act, s. 101, above, p. 130.
(*m*) See above, p. 15.
(*n*) See above, p. 5, note (*i*).
(*o*) Above, Part VII., Chapter II., p. 433.
(*p*) Including chattels real. See A. E. Act, s. 3 (1) (i), above, Part VII., Chapter II., p. 434.
(*q*) A. E. Act, s. 33, above, *ibid.*, Chapter IV., p. 441.

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the provisions of Part I. (*r*) of the Property Act relating to trustees for sale apply to personal representatives holding on trust for sale, but without prejudice to their rights and powers for purposes of administration (*s*).

Treatise, p. 254. "Trustees should not sell at a valuation." Ib. p. 255. "Option of purchase."

By virtue of sect. 28 (1), above referred to (*t*), of the Property Act, trustees for sale have the powers of a tenant for life as to selling "timber" or "fixtures" at a valuation (*u*), and as to granting an option to purchase or take a lease of land vested in them or any part thereof, or any easement, right or privilege over or in relation to the same (*v*).

Treatise, p. 259. "Powers of personal representative of sole or surviving trustee under C. Act, 1881."

Sect. 30 of the Conveyancing Act, 1881, is still in force as regards deaths occurring before the commencement of the Property Act (*w*). As regards deaths occurring after such commencement, it is repealed (*w*) and replaced by sect. 1 of the Administration Act, as interpreted by sect. 3 of the same Act (*x*).

Treatise, p. 259, n. (*y*).

Where a person dies "intestate" (*y*) after the commencement of the Administration Act, his real and personal estate, until "administration" (*y*) is granted in respect thereof, vests in the "Probate Judge" (*y*) in the same manner and to the same extent as formerly in the case of personal estate it vested in the ordinary (*z*).

Treatise, p. 260. "Under C. A. 1911." Ib. p. 265. "Capacity of personal representatives of sole or surviving trustee to exercise such powers." Treatise, p. 260.

Sect. 8 of the Conveyancing Act, 1911, is repealed (*a*) and re-enacted by sub-sect. (2) of sect. 18 of the Trustee Act, subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation (*b*).

There does not appear to be any enactment in any of the Consolidation Acts which prevents the possibility of this ques-

(*r*) Sects. 1 to 39.
(*s*) L. P. Act, s. 33.
(*t*) P. 608.
(*u*) See S. L. Act, s. 49 (2), above, Part IV., Chapter V., p. 317.
(*v*) *Ibid.*, s. 51; above, *ibid.*, p. 318.
(*w*) L. P. Act, s. 207, and Seventh Schedule, above, p. 17.
(*x*) Above, Part VII., Chapter II.
(*y*) See Table of Definitions, above, Part I., Chapter VII.
(*z*) A. E. Act, s. 9.
(*a*) T. Act, s. 70, and Second Schedule.
(*b*) Above, Part V., Chapter IV., p. 363.

tion arising in the case of a sole trustee dying after the commencement of those Acts.

"Question in case of a devise by a sole trustee" under the present law. Treatise, p. 262.

Sect. 22 (1) of the Trustee Act, 1893, is re-enacted by sub-sect. (1) of sect. 18 of the Trustee Act; but the new sub-section is not limited to take effect "unless the contrary is expressed in the instrument, if any, creating the power or trust," nor to trusts constituted or created by instruments coming into operation after the 31st December, 1881, and is subject to the restrictions imposed in regard to receipts by a sole trustee, not being a trust corporation.

"Survivorship of powers given to trustees."

Under the Settled Land Act no question can arise as to the necessity for obtaining the consent of the tenant for life to the exercise of any power (not being merely a power of revocation or appointment) *relating to the settled land* conferred by a settlement on the trustees of the settlement or other persons exercisable for any purpose, *whether or not provided for in that Act;* for, as we have seen (*c*), by virtue of sect. 108 (2) of that Act (*d*), after the commencement of that Act, and notwithstanding anything in the settlement, any such power is exercisable only by the tenant for life or statutory owner, as if it were an additional power conferred on the tenant for life within sect. 109 of the Settled Land Act and not otherwise. The effect of sect. 109 (*e*) is that any powers, additional or larger than those conferred by the Settled Land Act, conferred by a settlor, whether on the tenant for life or on the trustees of the settlement, shall operate and be exercisable as if they were conferred by the Act, and, *if relating to the settled land,* as if they were conferred by the Act *on the tenant for life.*

Treatise, p. 265.

"Trustees exercising a power conferred by a settlement for some purpose provided for in the Settled Land Acts."

Ib. p. 266.

"What are powers exercisable for some purpose provided in the Act."

S. L. Act, ss. 108, 109.

Powers, whether statutory or additional or larger, exercisable only by tenant for life, *if relating to the settled land.*

The above-mentioned provisions of sects. 108 and 109 of the Settled Land Act apply where two or more persons together constitute the tenant for life. Only persons of full age and entitled as joint tenants can together constitute the tenant for life for the purposes of that Act (*f*).

Treatise, pp. 268 to 270.

"Where two or more persons together constitute the tenant for life."

(*c*) Above, Part IV., Chapter III., pp. 269, 270.

(*d*) Re-enacting, with material amendments, sect. 56 (2) of the S. L. Act, 1882.

(*e*) Re-enacting, with material amendments, sect. 57 of the S. L. Act, 1882; above, *ibid.*

(*f*) S. L. Act, s. 19 (2), above, Part IV., Chapter II.

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Undivided shares.

Inasmuch as "land" in the Consolidation Acts does not include an undivided share in land (*g*), and there can, accordingly, be no "settlement" (*g*) or "tenant for life" (*g*) of an undivided share in land, the questions discussed and the authorities cited in this passage can have no application to any transaction taking place after the commencement of the Settled Land Act.

Treatise, p. 270. "Estate duty chargeable on land settled on trust for sale."

The subject of death duties is considered hereafter in connection with the chapter of the Treatise which treats "Of the Death Duties" (*h*).

Treatise, p. 270. "Sale of land purchased in breach of trust."

Land purchased in breach of trust becomes subject to an "implied" trust for sale, and, accordingly, falls within the provisions of sect. 23 (*i*) of the Property Act:—

Duration of trusts for sale.

23. Where land has, either before or after the commencement of this Act, become subject to an express or implied trust for sale, such trust shall, so far as regards the safety and protection of any purchaser thereunder, be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale.

This section applies to sales whether made before or after the commencement of this Act, but operates without prejudice to an order of any Court restraining a sale.

Treatise, p. 270, and nn. (*z*) and (*a*). "Sale of land purchased under power to invest settled personalty in the purchase of land."

Sect. 32 of the Property Act, replacing, with certain amendments, sub-sects. (1) and (2) of sect. 10 of the Conveyancing Act, 1911, is set out and discussed in the chapter of this book on "Dispositions on Trust for Sale" (*k*).

Treatise, p. 271, and n. (*c*). "Trustees receipts."

Sect. 20 (1) (*l*) of the Trustee Act, 1893, is re-enacted substantially by sub-sect. (1) of sect. 14 of the Trustee Act. Sub-sect. (2) of the latter section, imposing restrictions in regard to receipts by a sole trustee, not being a "trust corporation" (*m*), is set out and discussed in Section i. of Chapter IV. of Part V. of this book (*n*), where it is suggested

(*g*) See Table of Definitions, above, Part I., Chapter VII.
(*h*) Below, Section XXI.
(*i*) Re-enacting, without amendment, sub-sects. (3) and (4) of sect. 10 of the C. Act, 1911.
(*k*) Above, Part III., Chapter VII., p. 167.
(*l*) Sub-sect. (2) is not re-enacted.
(*m*) See Table of Definitions, above, Part I., Chapter VII.
(*n*) Above, pp. 361 *et seq.*

(amongst other things) that paragraph (a) of that sub-section, relating to a receipt for "the proceeds of sale or other capital money arising under a disposition on trust for sale of land," must be read in conjunction with sub-sect. (2) of sect. 27 of the Property Act, and would not apply, for example, to a sole trustee (not being a trust corporation) of a deed of arrangement selling for the benefit of creditors under a trust for sale contained in the deed.

Extension of definition of "trust corporation" by L. P. Act, 1926.

Statutory sanction to this view has been given indirectly by sect. 3 (*o*) of the Law of Property (Amendment) Act, 1926, which provides that for the purposes of (amongst other Acts) the Property Act the expression "trust corporation" includes the several persons and corporations therein mentioned, and, in particular, "in relation to the property of a bankrupt and property subject to a deed of arrangement, includes the trustee in bankruptcy and the trustee under the deed respectively."

Amendment of L. P. Act, s 27.

Sect. 27 of the Property Act is set out on p. 170 of this book. For sub-sect. (2) of that section a new sub-sect. (2) is substituted by the Law of Property (Amendment) Act, 1926 (*p*). The old sub-section only applied to a trust for sale created by a disposition. The new sub-section applies whether the trust for sale arises under a disposition or by operation of law, *e.g.*, under the provisions of the Property Act relating to undivided shares (*q*).

Treatise, p. 272 and nn. (*g*) and (*i*).

The effect on trustees' powers to sell without excluding the application of "statutory conditions of sale" (*r*) of the repeal of sect. 15 of the Trustee Act, 1893, and of sect. 66 of the Conveyancing Act, 1881, and of the substitution for the latter section of sect. 182 of the Property Act, has already been considered (*s*).

(*o*) Above, p. 543. This section is retrospective to the 1st January, 1926; see L. P. Act, 1926, s. 8 (2).
(*p*) L. P. Act, 1926, s. 7, and Schedule, above, p. 553.
(*q*) See above, Part III., Chapter V.
(*r*) Above, Part III., Chapter IV.
(*s*) Above, p. 608.

SECTION IX.

OF TITLE UNDER THE EXERCISE OF POWERS.

Treatise, Chap. IX. § 1, pp. 276 to 281.

§ 1.—Powers of Appointment.

i. *Repeals and Re-enactments* (*a*).

The Leases Acts, 1849 and 1850, are repealed (*b*) and re-enacted by sect. 152 of the Property Act (*c*). Sect. 12 of the stat. 22 & 23 Vict. c. 55 (Lord St. Leonards' Act) is repealed (*b*) and re-enacted by sect. 159 of the Property Act.

ii. *Substantive Amendments.*

Treatise, p. 279. "Fraudulent execution." L. P. Act, s. 157.

As we have seen (*d*), by sect. 157 of the Property Act, an instrument executed after the commencement of that Act, which purports to exercise such a power of appointment as is therein mentioned will not (save as therein provided) be void on the ground of fraud on the power as against "a purchaser in good faith," as therein defined.

Treatise, p. 279. "Remoteness of limitation." L. P. Act, s. 163. Validation of certain gifts void for remoteness.

Certain gifts which would otherwise be void for remoteness are validated by the following section of the Property Act:—

163.—(1) Where in a will, settlement or other instrument the absolute vesting either of capital or income of property, or the ascertainment of a beneficiary or class of beneficiaries, is made to depend on the attainment by the beneficiary or members of the class of an age exceeding twenty-one years, and thereby the gift to that beneficiary or class or any member thereof, or any gift over, remainder, executory limitation, or trust arising on the total or partial failure of the original

(*a*) See Explanatory Note, above, p. 562.
(*b*) L. P. Act, s. 207 and Seventh Schedule.
(*c*) That section does not apply to a lease of land held on charitable, ecclesiastical or public trusts, and takes effect without prejudice to the provision in the Property Act for the grant of leases in the name and on behalf of the estate owner of the land affected. (Sub-sects. (7), (8).)
(*d*) Above, p. 236.

gift, is, or but for this section would be, rendered void for remoteness, the will, settlement, or other instrument shall take effect for the purposes of such gift, gift over, remainder, executory limitation, or trust as if the absolute vesting or ascertainment aforesaid had been made to depend on the beneficiary or member of the class attaining the age of twenty-one years, and that age shall be substituted for the age stated in the will, settlement, or other instrument.

(2) This section applies to any instrument executed after the commencement of this Act and to any testamentary appointment (whether made in exercise of a general or special power), devise, or bequest contained in the will of a person dying after such commencement, whether the will is made before or after such commencement.

(3) This section applies without prejudice to any provision whereby the absolute vesting or ascertainment is also made to depend on the marriage of any person, or any other event which may occur before the age stated in the will, settlement, or other instrument is attained.

Application of section.

The section applies, it seems, only to a gift (1) contained in an instrument coming into operation after the commencement of the Act, (2) which is, or but for the section would be, void for remoteness *only* by reason of the specified age limit exceeding twenty-one years, and (3) would, independently of the section, be valid, if the specified age limit did not exceed twenty-one years.

The section does not alter the rule but the terms of the gift.

It will be seen that, where the section applies, it does not alter the rule against perpetuities, but alters the terms of the gift so as to make it comply with that rule.

Treatise, p. 280.

The rule here referred to and commonly called "the double possibility rule" is abolished by the following section of the Property Act to the extent and in the cases mentioned in that section:—

"Exercise of powers to appoint land amongst unborn *issue*." L. P. Act, s. 161.

Abolition of the double possibility rule.

161.—(1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.

(2) This section only applies to limitations or trusts created by an instrument coming into operation after the commencement of this Act.

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Treatise, Chap. IX., § 2, pp. 281 to 313.

§ 2.—Powers of Sale under Settled Land Acts.

i. *Repeals and Re-enactments.*

As we have seen, the Settled Land Act (*a*) (hereinafter usually referred to as "the Act" or "the new Act") repeals (*b*) and replaces the Settled Land Acts, 1882 to 1890.

Changes in the law.

The main provisions of the new Act and the changes thereby effected in the law relating to settled land have already been considered in some detail (*c*).

The following Table specifies in the first column such repealed enactments as are referred to in this section of Chapter IX. of the Treatise, and in the second column the enactments (if any) by which they are replaced (*d*):—

Repealed enactments.	Substituted enactment.
Statute of Frauds, s. 4	L. P. Act, s. 40.
S. L. Act, 1882, s. 2 (1)	S. L. Act, s. 1 (1) (i).
(2)	(4)
(3)	s. 2.
(4)	Not re-enacted.
(5)	S. L. Act, s. 19 (1).
(6)	(2).
(7)	(4).
(8)	s. 30 (1) (i) (ii).
(9)	s. 117 (1) (ii).
(10)	(1) (*e*).
s. 3 (i)	s. 38 (i).
(ii)	(ii).
(iii)	(iii).
(iv)	Not re-enacted.
s. 4 (1)	S. L. Act, s. 39 (1).
s. 10	s. 46.
s. 16	s. 56 (1).
s. 18	s. 71 (1) (iii).
s. 20	s. 72.
s. 22 (1)	s. 75 (1).
s. 31 (1) (2).	s. 90 (1) (2) (5).

(*a*) 15 Geo. 5, c. 18. See above, Part I., Chapter III.
(*b*) Above, p. 18, with the exception there mentioned.
(*c*) Above, Part IV., pp. 252 to 351.
(*d*) See Explanatory Note, p. 562.
(*e*) See Table of Definitions, above, Part I., Chapter VII.

Repealed enactment.	Substituted enactment.
S. L. Act, 1882, s. 38	S. L. Act, s. 34.
s. 39	s. 94.
s. 40	s. 95.
s. 45 / S. L. Act, 1884, s. 5	s. 101.
S. L. Act, 1882, s. 47	s. 114.
s. 50 (1)	s. 104 (1).
(2)	(2).
(3)	(3).
(4)	(12).
s. 53	s. 107 (1).
s. 54	s. 110 (1).
s. 58	s. 20.
S. L. Act, 1890, s. 4	s. 104 (11).
s. 9	Not re-enacted.
s. 10 (2)	S. L. Act, s. 65 (1) (a).
(3)	(2).
s. 11	s. 71 (1) (i) (ix), (2).
s. 16	s. 30 (1) (iii) (iv).
Housing of the Working Classes Act, 1890, s. 74	s. 57 (2) (a).
T. Act, 1893, s. 47	T. Act, s. 64 (1).

ii. *Substantive Amendments.*

The doubt entertained by the Court in *Re Bretherton's Estate*, as mentioned in note (*h*) on this page of the Treatise, is removed by paragraph (iii) of the following section of the new Act:—

Treatise, p. 282. "Sales under the Settled Land Acts."

S. L. Act, s. 38. Powers of sale and exchange. [S. L. Act, 1882, s. 3 (1).]

38. [A tenant for life—

(i) May sell the settled land, or any part thereof, or any easement, right or privilege of any kind over or in relation to the land; and

(ii) Where the settlement comprises a manor, may sell the seignory of any freehold land within the manor, with or without any exception or reservation of all or any mines or minerals, or of any rights or powers relative to mining purposes, so as in every such case to effect an] extinguishment of the manorial incidents; [and [Ib. (ii).]

(iii) May make an exchange of the settled land, or any part thereof, or of any easement, right, or privilege of any kind,] whether or not newly created, [over or in relation to the settled land, or any part thereof, for other land, or for any easement, right or privilege of any kind,] whether [Ib. (iii). S. L. Act, 1890, s. 5.]

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or not newly created, [over or in relation to other land,] including an exchange in consideration of money paid for equality of exchange.

Sale by tenant for life under S. L. Act. Points to be attended to.

On a sale by a "tenant for life" (*f*) under the powers of the Settled Land Act, the following appear to be the points to which attention must principally be directed:—

I. *Vesting Instrument.*

I. Vesting instrument. Vesting of legal estate in tenant for life.

The purchaser's advisers must be satisfied that, as required by the Act (*g*), a "vesting instrument" (*h*) has been executed vesting the settled land, or declaring it to be vested, in the tenant for life for the "legal estate" (*i*) the subject of the "settlement" (*k*), and that the vesting instrument contains the prescribed statements and particulars and otherwise fulfils the requirements of the Act (*l*).

Identity.

It must also, of course, be shown that the land contracted to be sold is comprised in the vesting instrument. The prescribed statements and particulars include "a description, either specific or general, of the settled land" (*m*). The description may be by reference to a previous "vesting instrument," if any such be existing, and, where there is "a settlement subsisting at the commencement of the Act" (*n*), by reference to that settlement and to any instrument whereby land has been conveyed to the uses or upon the trusts of that settlement, but not (save as last aforesaid) by reference to a "trust instrument" (*o*), nor, in any case, by reference to a disentailing deed (*p*).

(*f*) See S. L. Act, ss. 19, 20, above, pp. 262 *et seq.*

(*g*) S. L. Act, s. 13, above, p. 286.

(*h*) That is, a "principal vesting deed," a "vesting assent," or, in exceptional cases, a "vesting order." See Table of Definitions, above, Part I., Chapter VII. See also for "principal vesting deed," above, p. 277; for "vesting assent," above, p. 286; and for "vesting order," above, p. 300.

(*i*) S. L. Act, s. 5, above, p. 277.

(*k*) See S. L. Act, s. 1. "Land held on trust for sale" is not settled land: see L. P. Act, 1926, s. 7 and sched., amending S. L. Act, ss. 1 and 3, above, pp. 547, 548.

(*l*) See S. L. Act, s. 5, above, p. 277. For forms of vesting instruments, see S. L. Act, First Schedule, Forms Nos. 1, 2 and 5.

(*m*) S. L. Act, s. 5 (1) (a).

(*n*) Above, p. 289.

(*o*) See S. L. Act, ss. 4 and 9, above, pp. 277 and 281. A

(*p*) S. L. Act, s. 5 (2).

Subsidiary vesting deed.

If the land contracted to be sold has been acquired after the commencement of the Act with "capital money arising under the Act" (*q*) there should be abstracted and produced the "subsidiary vesting deed" by which the land was vested in the tenant for life (*r*), and it must be seen that such subsidiary vesting deed contains the prescribed statements and particulars (*s*).

Further inquiries in case of *first* vesting instrument. S. L. Act, s. 110 (2), proviso.

By virtue of the proviso (*t*) to sub-sect. (2) of sect. 110 of the Act, in the case of the *first* vesting instrument executed for the purpose of giving effect to any such instrument as therein mentioned, and in particular (a) "a settlement subsisting at the commencement of the Act" (*u*); or (b) "an instrument which by virtue of the Act is deemed to be a settlement" (*v*), a purchaser is concerned to see—

(i) As to identity.

(i) that the land contracted to be sold is comprised in such settlement or instrument;

(ii) As to the vendor's title as tenant for life.

(ii) that the person in whom the settled land is by such vesting instrument vested, or declared to be vested, that is, *ex hypothesi*, the vendor, is the person in whom it ought to be vested as "tenant for life" (*w*); and

(iii) As to the trustees of the settlement.

(iii) that the persons thereby stated to be "the trustees of the settlement" are the properly constituted trustees of the settlement (*x*).

Restrictions on purchaser of legal estate in settled land. S. L. Act, s. 110 (2).

Subject as above provided in the case of such a *first* vesting instrument as aforesaid, a purchaser of a legal estate in settled land is subject to the following restrictions:—(1) He is not bound *or entitled* to call for the production of the "trust

"settlement subsisting at the commencement of the Act" is a "trust instrument": see S. L. Act, Second Schedule, para. 1 (1), above, p. 290.

(*q*) See above, Part IV., Chapter VI., p. 330.

(*r*) See S. L. Act, s. 10, above, p. 295, and Form No. 4 in the First Schedule to the Act. See also the proviso to sub-sect. (1) of sect. 10, above, p. 297.

(*s*) S. L. Act, s. 10 (2), above, p. 296.

(*t*) Above, p. 345.

(*u*) Above, p. 289.

(*v*) See S. L. Act, s. 1, above, p. 258, as amended by L. P. Act, 1926, s. 7 and Sched., above, p. 547.

(*w*) See above, Part IV., Chapter II., p. 262.

(*x*) See above, Part IV., Chapter III.

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instrument" (*y*) or any information concerning that instrument or any *ad valorem* stamp duty thereon; and (2) whether or not he has notice of its contents, he is *bound* and entitled, *if the last or only* (*z*) *principal vesting instrument contains the statements and particulars required by the Act* (*a*), to make the assumptions specified in paras. (a) to (e) of sub-sect. (2) (*b*) of sect. 110 of the Act.

Length of title to be shown.

It is thought (*c*) that, notwithstanding these restrictions, the purchaser, in the absence of express stipulation to the contrary, will be entitled to a thirty years' title (*d*).

II. *Principal Mansion-house, &c.*

Treatise, p. 282 and n. (*k*).

Sub-sects. (2) and (3) (*e*) of sect. 10, referred to in note (*k*) on this page of the Treatise, of the Act of 1890 are replaced by the following section of the new Act:—

Principal mansion house.

S. L. Act, s. 65.

Power to dispose of mansion.

65.—(1) The powers of disposing of settled land conferred by this Act on a tenant for life may be exercised as respects the principal mansion house, if any, on any settled land, and the pleasure grounds and park and lands, if any, usually occupied therewith:

[Provided that those powers shall not be exercised without the consent of the trustees of the settlement or an order of the court]—

[S. L. Act, 1890, s. 10 (2).]

(a) if the settlement is a settlement made or coming into operation before the commencement of this Act and the settlement does not expressly provide to the contrary; or

(b) if the settlement is a settlement made or coming into operation after the commencement of this Act and the settlement expressly provides that these powers or any of them shall not be exercised without such consent or order.

[Ib. (3).]

[(2) Where a house is usually occupied as a farmhouse, or where the site of any house and the pleasure grounds and park and lands, if any, usually occupied therewith do not together exceed twenty-five acres in extent, the house is not to be deemed a principal mansion house within the meaning of this section,] and may accordingly be disposed of in like manner as any other part of the settled land.

(*y*) See above, p. 620, n. (*o*).

(*z*) The words "last or only" have reference to the fact that there must be a fresh vesting instrument on every change of ownership during the subsistence of the settlement: above, Part IV., Chapter IV., p. 284.

(*a*) See S. L. Act, s. 5, above, p. 277.

(*b*) Set out above, pp. 344, 345.

(*c*) See above, p. 348, and Part III., Chapter XII.

(*d*) See L. P. Act, s. 44 (1), above, p. 134.

(*e*) Sub-sect. (1) was repealed by the S. L. R. Act, 1908.

Effect of subs. (1).

Sub-sect. (1) of this section leaves the law unaltered in regard to settlements made or coming into operation before the commencement of the new Act, because it was always possible to provide by such a settlement that neither the consent of the trustees of the settlement nor an order of the Court should be requisite for a sale or other disposition of the mansion house and the lands occupied therewith (*f*). In regard to a settlement made or coming into operation after the commencement of the new Act, such consent or order will not be necessary, unless expressly required by the settlement.

III. *Payment of Purchase-money.*

Treatise, p. 282, and nn. (*l*) and (*m*). "Trustees of the settlement."

We have already seen who are the trustees of the settlement for the purposes of the new Act, and that they include persons who, at the commencement of the new Act, were the trustees of a settlement for the purposes of the repealed Acts (*g*).

Payment to trustees of settlement. [S. L. Act, 1882, s. 39 (1).]

Sect. 39 (1) of the Act of 1882 provided that, notwithstanding anything in that Act, capital money arising under that Act should not be paid to fewer than two persons as trustees of a settlement, "unless the settlement authorises the receipt of capital trust money of the settlement by one trustee."

S. L. Act, s. 94.

This section is replaced by the following section of the new Act:—

Number of trustees to act. [S. L. Act, 1882, s. 39 (1).] [Ib. (2).]

94.—[(1) Notwithstanding anything in this Act, capital money arising under this Act shall not be paid to fewer than two persons as trustees of a settlement, unless the] trustee is a trust corporation.

[(2) Subject as aforesaid the provisions of this Act referring to the trustees of a settlement apply to the surviving or continuing trustees or trustee of the settlement for the time being.]

The effect of sub-sect. (1) of this section appears to be that the receipt of a sole trustee, not being a trust corporation (*h*), for capital money (*h*) paid after the commencement of the new

(*f*) See S. L. Act, 1882, s. 57, now replaced, with some modifications, by sect. 109 of the S. L. Act, above, Part IV., Chapter III., p. 270.

(*g*) Above, Part IV., Chapter III.

(*h*) For the definitions of "trust corporation" and "capital money," see Table of Definitions, above, Part I., Chapter VII.; and for the extension of the definition of "trust corporation," see L. P. Act, 1926, s. 3, above, p. 543.

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Act will not be a good discharge to the person paying the same, even though such trustee should be expressly authorised by the settlement to give such a discharge. This is emphasised by sect. 95 of the new Act, which is as follows:—

S. L. Act, s. 95.

Trustees' receipts. [S. L. Act, 1882, s. 40.]

95. [The receipt] or direction [in writing of] or by [the trustees of the settlement,] or where a sole trustee is a trust corporation, of or by that trustee, [or of] or by [the personal representatives of the last surviving or continuing trustee, for] or relating to [any money or securities, paid or transferred to] or by the direction of [the trustees, trustee, or representatives, as the case may be, effectually discharges the payer or transferor therefrom, and from being bound to see to the application or being answerable for any loss or misapplication thereof, and, in case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of this Act, or that no more than is wanted is raised.]

The words "or where a sole trustee is a trust corporation, of or by that trustee" in this section take the place of the words "or where one trustee is empowered to act, of one trustee" in the repealed section.

Treatise, p. 283 and n. (*n*).

Payment of purchase-money to a mortgagee.

The alteration in the new section, by referring to a "direction by," as well as a "receipt of," the trustees, trustee or representatives, appears intended to adopt, and give statutory authority to, the decision in *Re Norton and Las Casas' Contract,* cited in note (*n*), that payment of purchase-money to an incumbrancer will not discharge the purchaser unless made by the direction of the trustees.

IV. *The Statutory Power of Conveyance.*

Treatise, p. 283 and n. (*o*). [S. L. Act, 1882, s. 20.]

Sect. 20 of the Act of 1882 is replaced by sect. 72 of the new Act. The latter section has already been set out and considered (*i*).

V. *Fiduciary Position of Tenant for Life.*

Ib. p. 283 and n. (*p*). [S. L. Act, 1882, s. 53.]

Sub-sect. (1) of the substituted section (*k*) expressly extends to a "statutory owner" the duty in this respect of a tenant

(*i*) Above, Part IV., Chapter V., p. 326.

(*k*) Namely, S. L. Act, s. 107. Sub-sect. (2), replacing sect. 7 (2) of the Housing, Town Planning, &c. Act, 1909, enacts that the provision by a tenant for life or statutory owner, at his own expense, of dwellings available for the working classes on any settled land shall

for life, but does not otherwise differ from the repealed section.

Sect. 101 of the new Act, replacing sect. 45 of the Act of 1882 and sect. 5 of the Settled Land Act, 1884, extends to a "statutory owner" the duty of giving the notices, and includes the grant of an option amongst the transactions in respect of which the notices must be given, and substitutes for the proviso (*l*) that at the date of notice given the number of trustees shall not be less than two, "unless a contrary intention is expressed in the settlement," the following proviso (*m*):—

Treatise, pp. 283-4 and n. (*q*) to (*v*). "As to giving notice of an intended sale." [S. L. Act, 1882, s. 45; S. L. Act, 1884, s. 5.]

Provided that a notice under this section shall not be valid unless at the date thereof the trustee is a trust corporation, or the number of trustees is not less than two.

Subject to the above modifications, this passage of the Treatise and the cases of *Marlborough* v. *Sartoris* and *Hatten* v. *Russell* will apply equally under the new Act.

As we have seen (*n*), sub-sect. (2) of sect. 110 of the Act and the proviso to that sub-section provide as to the assumptions to be made or the evidence to be required in regard to the trustees of the settlement, and sub-sect. (4) of the same section provides that, where no capital money arises under a transaction, a disposition by a tenant for life or statutory owner shall, in favour of a purchaser of a legal estate, have effect under the Act notwithstanding that at the date of the transaction there are no trustees of the settlement. Subject to these provisions, and to the substitution of the new for the old enactments (*o*), this passage of the Treatise and the cases there cited will apply under the new Act.

Treatise, pp. 284-5. "As to whether there are trustees of the settlement at the time of the completion of the sale."

We have already seen (*p*) who are trustees for the purposes

Treatise, pp. 286, 287.

not be deemed to be an injury to any interest in reversion or remainder in that land, but such provision shall not be made by a tenant for life or statutory owner without the previous approval in writing of the trustees of the settlement.

(*l*) See sub-sect. (2) of sect. 45 of the S. L. Act, 1882.

(*m*) See sub-sect. (1) of sect. 101 of the S. L. Act.

(*n*) Above, pp. 344 to 347. (*o*) See Table, above, p. 618.

(*p*) Above, Part IV., Chapter III. Effect is given to the decision in *Constable* v. *Constable*, cited in n. (*h*), by the words "(subject or not to the consent of any person)" in S. L. Act, s. 30 (1) (i), above, p. 268; to the decision in *Re Spearman Settled Estate*, cited in n. (*i*), by S. L. Act, s. 30 (1) (v), above, *ib.*; and to the decision in *Re Arran and Knowlesden and Creer's Contract*, cited *ib.*, by S. L. Act, s. 32, above, p. 271.

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"Who are trustees for the purposes of the Settled Land Acts."
Treatise, p. 287.

of the new Act and that, subject to the restrictions on the exercise of powers by the trustees (*q*), substantially the same persons or classes of persons are trustees for those purposes as were trustees for the purposes of the repealed Acts.

This passage will apply equally to the case of a tenant for life selling under the new Act.

"Deposit on sale by auction of settled land."
Treatise, p. 287 and n. (*q*).

Sub-sect. (1) of sect. 90 of the new Act, replacing, with some modifications, sub-sect. (1) of sect. 31 of the Act of 1882, empowers a tenant for life to enter into and vary or rescind contracts as therein mentioned.

"Forfeiture of deposit."

Sub-sect. (5) (*r*) of the same section is as follows:—

> (5) All money, not being rent, received on the exercise by the tenant for life or statutory owner of the powers conferred by sub-section (1) of this section, shall, unless the court on an application made within six months after the receipt of the money, or within such further time as the court may in special circumstances allow, otherwise directs, be capital money arising under this Act.

The latter sub-section appears to cover the case of a deposit forfeited for the purchaser's default on a sale by the tenant for life under the new Act. If not, there seems no reason to doubt that the decision in the case cited in note (*q*) on this page of the Treatise will apply to a deposit so forfeited.

Treatise, pp. 287, 288 and n. (*s*).

"As to the power of conveyance under the Settled Land Acts."
Treatise, pp. 288-290.

The effect of an exercise of the power of conveyance conferred by sect. 72 of the new Act, replacing sect. 20 of the Act of 1882, has already been considered (*s*).

"What is 'the settlement.'"

"What constitutes a settlement" for the purposes of the Settled Land Act is defined in sect. 1 of that Act (*t*). As we have seen (*u*), the principle of the cases cited in this passage of the Treatise has been carried to its full extent by providing that land, even if held by a person of full age beneficially entitled in possession for an estate in fee simple in possession or for a term of years absolute, is settled land, if it is so held

(*q*) S. L. Act, ss. 108, 109, above, pp. 269, 270.
(*r*) This sub-section takes the place of the words "and any such consideration, if paid in money, shall be capital money, arising under this Act" in sub-sect. (1) (ii) of sect. 31 of the S. L. Act, 1882.
(*s*) Above, Part IV., Chapter V., Section (xiv), pp. 326 *et seq.*
(*t*) See above, p. 621, n. (*v*).
(*u*) *Ib.* Section ii, pp. 265 *et seq.*

"charged" with any such charge as is mentioned in sect. 1 (1) (v) of the Act (*v*), or "subject to any estates, interests, charges, or powers of charging, subsisting or capable of arising under a settlement" (*w*).

Sect. 4 of the Act of 1890 is replaced by sub-sect. (11) of sect. 104 of the new Act. The latter section, the other sub-sections of which replace, with important amendments, the provisions of sect. 50 of the Act of 1882, will be considered hereafter (*x*).

Treatise, pp. 290, 291 and nn. (*b*) and (*e*).

"Assignments of or charges on the life estate in consideration of marriage or by way of family arrangement."

Under the new Act (*y*), subject and without prejudice to any appointment made or to be made by the Court, whether before or after the commencement of the Act, of trustees of a compound settlement, the trustees thereof for the purposes of the Act are the persons who are for the time being the trustees for those purposes of that one of the instruments together constituting the compound settlement which is earliest in date or operation.

Treatise, p. 291.

"The compound settlement."

"Trustees of the compound settlement."

The decision in *Re Constable's Settled Estates*, cited in notes (*i*) and (*k*) to this passage, to the effect that a limitation in a resettlement by tenant for life and remainderman of the settled land to the use of the tenant for life "in restoration of his former life estate," was ineffectual to give back to him the same life estate with which he had parted, or to cause him to be *in* of the old use, was overruled by the House of Lords in *Parr* v. *Att.-Gen.*, (1926) A. C. 239 (*z*), and is also overruled by sub-sect. (2) of the following section of the new Act:—

Treatise, p. 292 and nn. (*i*), (*k*).

"Notwithstanding resettlement."

Re Constable's Settled Estates.

S. L. Act, s. 22.

Provisions applicable where interest in settled land is restored.

22.—(1) Where by a disentailing assurance settled land is expressed to be limited (whether subject or not to any estates, interests, charges or powers expressly created or conferred thereby) upon the trusts subsisting with respect thereto immediately before the execution of such disentailing assurance, or any of such trusts, then, for the purposes of this Act and otherwise, a person entitled to any estate or

(*v*) See above, p. 258.

(*w*) S. L. Act, s. 20 (1) (ix), as to which see L. P. Act, 1926, s. 1, above, p. 540.

(*x*) Below, p. 629.

(*y*) Sect. 31, above, p. 260; and see L. P. Act, 1926, Sched., above, p. 549.

(*z*) Thus, in effect, restoring the decision of Farwell, J., in *Re Cornwallis West and Munro's Contract*, cited in n. (*o*) on p. 295 of the Treatise. That decision is explained in *Re Wimborne and Browne's Contract*, (1904) 1 Ch. at p. 542.

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interest in the settled land under any such previously subsisting trust is entitled thereto after the execution of such disentailing assurance as of his former estate or interest.

(2) Where by a resettlement of settled land any estate or interest therein is expressed to be limited to any person (whether subject or not to any estate, interest, charge or power expressly created or conferred by the resettlement) in restoration or confirmation of his estate or interest under a prior settlement, then, for the purposes of this Act and otherwise, that person is entitled to the estate or interest so restored or confirmed as of his former estate or interest, and in addition to the powers exercisable by him in respect of his former estate or interest, he is capable of exercising all such further powers as he could have exercised by virtue of the resettlement, if his estate or interest under the prior settlement had not been so restored or confirmed, but he had been entitled under the resettlement only.

Effect of subs. (2).

The effect of sub-sect. (2), in the case of a tenant for life whose estate or interest under a prior settlement is expressed to be restored or confirmed, is that he will be tenant for life under the prior settlement and not under the resettlement; though, by the express terms of the sub-section, he will be able to exercise any further powers conferred upon him by the resettlement as if he had been entitled under the resettlement only.

Re Wimborne and Browne's Contract.

The decision in *Re Wimborne and Browne's Contract*, cited in note (*k*) to this passage, in so far as it involves the proposition that a tenant for life who has surrendered his life interest to the next remainderman can still exercise his statutory powers, is overruled by sect. 105 of the new Act (*a*).

Treatise, pp. 295-298. Alternative courses open to tenant for life.

The law as stated in these passages of the Treatise is superseded by the rule or principle as established by the new Act, that where there is a compound settlement, that settlement is *the* settlement for the purposes of the Act, and it is only as tenant for life under the compound settlement, and so as to override all limitations, charges, or powers of charging subsisting or capable of arising under any and every instrument which is a constituent part of the compound settlement, that a tenant for life can exercise his powers (*b*).

(*a*) Below, p. 632.

(*b*) See S. L. Act, ss. 1 (1), 3, and 31, above, Part IV., Chapter II., pp. 260 to 262. As to the modification of this principle in the case of a person on whom the powers of a tenant for life are conferred by para. (ix) of sub-sect. (1) of sect. 20 of the S. L. Act, see L. P. Act, 1926, s. 1, above, p. 540.

Treatise, pp. 298-301. "The exceptions to the tenant for life's power of conveyance."

The modifications effected by sect. 72 of the new Act, as compared with sect. 20 of the Act of 1882, in regard to the estate or interest which can be effected by a "conveyance" by the tenant for life, and as to the estates, interests and charges which are excepted from his power of conveyance, have already been considered (*c*). Subject to these modifications and to the changes effected by sect. 104 of the new Act (*d*), replacing sect. 50 of the Act of 1882, and to the principle or rule just referred to (*e*), the law as stated in this passage of the Treatise and, in particular, the decision in *Re Dickin and Kelsall's Contract*, cited on page 299, appear to be unaffected.

Treatise, pp. 301-304. S. L. Act, s. 104.

The following section of the new Act replaces sect. 50 of the Act of 1882, and, as will be seen, effects substantial alterations in the law:—

Powers not assignable, and contract not to exercise powers void. [S. L. Act, 1882, s. 50 (1).]

104.—[(1) The powers under this Act of a tenant for life are not capable of assignment or release, and do not pass to a person as being, by operation of law or otherwise, an assignee of a tenant for life, and remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement.]

This subsection applies notwithstanding that the estate or interest of the tenant for life under the settlement was not in possession when the assignment was made or took effect by operation of law.

[Ib. (2).] [(2) A contract by a tenant for life not to exercise his powers under this Act or any of them shall be void.]

[Ib. (3).] (3) Where an assignment for value of the estate or interest of the tenant for life was made before the commencement of this Act, [this section shall operate without prejudice to the rights of the assignee, and in that case the assignee's rights shall not be affected without his consent, except that—

(a) unless the assignee is actually in possession of the settled land or the part thereof affected, his consent shall not be requisite for the making of leases thereof by the tenant for life] or statutory owner, [provided the leases are made at the best rent that can reasonably be obtained, without fine, and in other respects are in conformity with this Act;] and

(b) the consent of the assignee shall not be required to an investment of capital money for the time being affected by the assignment in securities authorised by statute for the investment of trust money.

(4) Where such an assignment for value is made or comes into operation after the commencement of this Act, the consent of the

(*c*) Above, Part IV., Chapter V., pp. 326 *et seq.*
(*d*) Below.
(*e*) Above, p. 628.

assignee shall not be requisite for the exercise by the tenant for life of any of the powers conferred by this Act:

Provided that—

(a) the assignee shall be entitled to the same or the like estate or interest in or charge on the land, money, or securities for the time being representing the land, money, or securities comprised in the assignment, as he had by virtue of the assignment in the last-mentioned land, money, or securities; and

(b) if the assignment so provides, or if it takes effect by operation of the law of bankruptcy, and after notice thereof to the trustees of the settlement, no investment or application of capital money for the time being affected by the assignment shall be made without the consent of the assignee, except an investment in securities authorised by statute for the investment of trust money; and

(c) notice of the intended transaction shall, unless the assignment otherwise provides, be given to the assignee, but a purchaser shall not be concerned to see or inquire whether such notice has been given.

(5) Where such an assignment for value was made before the commencement of this Act, then on the exercise by the tenant for life after such commencement of any of the powers conferred by this Act—

(a) a purchaser shall not be concerned to see or inquire whether the consent of the assignee has been obtained; and

(b) the provisions of paragraph (a) of the last subsection shall apply for the benefit of the assignee.

(6) A trustee or personal representative who is an assignee for value shall have power to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, and to bind by such consent all persons interested in the trust estate, or the estate of the testator or intestate.

(7) If by the original assignment, or by any subsequent disposition, the estate or interest assigned or created by the original assignment, or any part thereof, or any derivative interest is settled on persons in succession, whether subject to any prior charge or not, and there is no trustee or personal representative in whom the entirety of the estate or interest so settled is vested, then the person for the time being entitled in possession under the limitations of that settlement, whether as trustee or beneficiary, or who would, if of full age, be so entitled, and notwithstanding any charge or incumbrance subsisting or to arise under such settlement, shall have power to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, and to bind by such consent all persons interested or to become interested under such settlement.

(8) Where an assignee for value, or any person who has power to consent as aforesaid under this section, is an infant, the consent may

be given on his behalf by his parents or parent or testamentary or other guardian in the order named.

(9) The court shall have power to authorise any person interested under any assignment to consent to the exercise by the tenant for life of his powers under this Act, or to any such investment or application of capital money as aforesaid, on behalf of himself and all other persons interested, or who may become interested under such assignment.

(10) An assignment by operation of the law of bankruptcy, where the assignment comes into operation after the commencement of this Act, shall be deemed to be an assignment for value for the purposes of this section.

(11) [An instrument whereby a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement is to be deemed one of the instruments creating the settlement, and not an assignment for value for the purposes of this section:

Provided that this subsection shall not have effect with respect to any disposition made before the eighteenth day of August, eighteen hundred and ninety, if inconsistent with the nature or terms of the disposition.] [S. L. Act, 1890, s. 4.]

(12) [This section extends to assignments made or coming into operation before or after the commencement of this Act, and in this section "assignment" includes assignment by way of mortgage, and any partial or qualified assignment, and any charge or incumbrance, "assignee" has a corresponding meaning,] and "assignee for value" includes persons deriving title under the original assignee. [S. L. Act, 1882, s. 50 (4).]

Alterations in the law.

Assignments *before* the Act.

It will be seen that by this section the law, in relation to an assignment for value of the estate or interest of the tenant for life made *before* the commencement of the new Act, is altered as follows:—

Subs. 3 (b).

(1) The consent of the assignee will not, after the commencement of the new Act, be required to an investment of capital money for the time being affected by the assignment in "securities" (*f*), authorised by statute for the investment of trust money; and

Subs. (5).

(2) On the exercise by the tenant for life after such commencement of any of the powers conferred by the new Act—

(a) a "purchaser" (*f*) will not be concerned to see or inquire whether the consent of the assignee has been obtained; and

(b) the provisions of paragraph (a) of sub-sect. (4) will apply for the benefit of the assignee.

(*f*) See Table of Definitions, above, Part I., Chapter VII.

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Assignments *after* the Act. Subs. (4).

As regards such an assignment for value made or coming into operation *after* the commencement of the new Act, the effect of the section appears to be that *in no case* is the consent of the assignee necessary to an exercise by the tenant for life of any of the powers conferred by the Act; and that, even where under paragraph (c) of sub-sect. (4) notice of the intended transaction has to be given to the assignee, a purchaser will not be concerned to see or inquire whether such notice has been given.

Subss. (4) and (5). Purchaser, not bound to, should not inquire.

Where as in this case and under sub-sect. (5) (a) a purchaser is not concerned to see or inquire, he should not make any inquiry; as, if he should do so, he may be affected with notice of some irregularity, and so lose the protection which he would otherwise enjoy.

Subss. (6), (7), (8) and (9). Consents how to be given.

Sub-sects. (6), (7), (8) and (9) (*g*) merely prescribe how consents may be given in the several circumstances therein mentioned in cases where consent is required, and in no way affect a "purchaser."

Subs. (11). Date referred to.

The date mentioned in sub-sect. (11), namely, the 18th August, 1890, is the date of the commencement of the Act of 1890.

S. L. Act, s. 105.

The provisions of sect. 104 of the new Act are qualified by the provisions of the next following section, which is as follows:—

Effect of surrender of life estate to the next remainderman.

105.—(1) Where the estate or interest of a tenant for life under the settlement has been or is absolutely assured with intent to extinguish the same, either before or after the commencement of this Act, to the person next entitled in remainder or reversion under the settlement, then, *if and when such remainderman or reversioner would, if the tenant for life were dead, be or have the powers of a tenant for life under this Act* (*h*), the statutory powers of the tenant for life under this Act shall, in reference to the property affected by the assurance, and notwithstanding the provisions of the last preceding section, cease to be exercisable by him, and the statutory powers shall thenceforth become exercisable as if he were dead, but without prejudice to any incumbrance affecting the estate or interest assured, and

(*g*) As to sub-sect. (10), see below, p. 634.

(*h*) The words in italics are repealed by the L. P. Act, 1926, s. 7 and Sched., above, p. 550.

to the rights to which any incumbrancer would have been entitled if those powers had remained exercisable by the tenant for life.

This subsection applies whether or not any term of years or charge intervenes, or the estate of the remainderman or reversioner is liable to be defeated, and whether or not the estate or interest of the tenant for life under the settlement was in possession at the date of the assurance.

This subsection does not prejudice anything done by the tenant for life before the commencement of this Act, in exercise of any power operating under the Settled Land Acts, 1882 to 1890, or, unless the assurance provides to the contrary, operate to accelerate any such intervening term of years or charge as aforesaid.

(2) In this section "assurance" means any surrender, conveyance, assignment or appointment under a power (whether vested in any person solely, or jointly in two or more persons) which operates in equity to extinguish the estate or interest of the tenant for life, and "assured" has a corresponding meaning.

Re Bruen's Estate.

This section confirms the decision in *Re Bruen's Estate*, (1911) 1 Ir. 76, that, where a tenant for life in possession surrenders his life estate to a tenant for life in remainder, and there is no intermediate estate to prevent merger, the second tenant for life can exercise the powers of the Settled Land Acts as tenant for life in possession. The Court left open the question whether the powers vested in the first tenant for life continued exercisable by him. This section, however, enacts that the statutory powers of the surrenderor shall cease to be exercisable by him.

Treatise, pp. 304, 305 and nn. (*l*) to (*p*).

"Gratuitous assignment of the life estate."

"Release of life estate."

These passages of the Treatise and the decisions cited in the notes thereto are no longer law in so far as they are inconsistent with sect. 105 of the Act (*i*). The case of *Re Barlow's Contract*, cited in notes (*l*) and (*m*), is clearly inapplicable to a legal system under which an undivided share in land is not recognised as "land," or as capable of existing except in the shape of a share in the net proceeds of sale of the entirety of the land and in the net rents and profits until sale (*k*). The cases of *Re Trafford's Settled Estates*, cited in notes (*n*) and (*p*), and *Re Monckton's Settlement*, cited in note (*n*), have already been noticed (*l*); and, as we have seen (*m*), *Re Constable's Settled Estates*, cited in note (*p*), is overruled.

(*i*) Above, p. 632.
(*k*) See above, Part III., Chapter V.
(*l*) Above, p. 267.
(*m*) Above, p. 627.

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Treatise, p. 305. "Bankruptcy of tenant for life."

Under sect. 104 of the Act (*n*) it is still the law that on the bankruptcy of a tenant for life his statutory powers do not pass to his trustee in bankruptcy, but remain exercisable by him; but in other respects this passage of the Treatise no longer holds good. For, as we have seen, an assignment by operation of the law of bankruptcy, where the assignment comes into operation *after* the commencement of the Act, is deemed to be an assignment for value for the purposes of that section (*o*); and in that section "assignee for value" includes persons deriving title under the original assignee (*p*).

Treatise, p. 306. "Sale under the Settled Land Acts by a bankrupt tenant for life."

It appears to follow that a purchaser of the life estate from the trustee in bankruptcy of the tenant for life, at any rate where the trustee's title arises after the commencement of the Act, is an assignee for value within the meaning of the section, and can be in no better position than the trustee under whom he claims. The consent, therefore, of such a purchaser to a sale by the tenant for life is not required, and his estate or interest will attach to the proceeds of sale and the property for the time being representing the same (*q*); and such will be the position also of a trustee taking the life estate under a composition or scheme of arrangement approved by the Court in bankruptcy proceedings, for there seems no doubt that such a trustee is an "assignee for value."

Treatise, p. 306. "Trustee taking the life estate under a composition or scheme of arrangement in bankruptcy proceedings."

The provisions of sect. 104 of the Act apply, of course, only to the "equitable interest" of the tenant for life. As regards the "legal estate," which is, or should be, vested in the tenant for life, sect. 103 of the new Act enacts as follows:—

S. L. Act, s. 103.

Legal estate of tenant for life.

Legal estate in settled land not to vest in trustee in bankruptcy of estate owner.

> 103. The legal estate in settled land shall not vest in the trustee in bankruptcy of an estate owner unless and until the estate owner becomes absolutely and beneficially entitled to the settled land free from all limitations, powers, and charges taking effect under the settlement.

Treatise, pp. 307-310. "Purchaser from tenant for life," &c.

Changes in the law.

It is thought that, having regard to the changes in the law effected by the new Act, the law as stated in these passages of the Treatise may be restated as follows:—

1. The estate or interest which the tenant for life is em-

(*n*) Above, p. 629, replacing sect. 50 of the S. L. Act, 1882.
(*o*) S. L. Act, s. 104, sub-s. (10), above, p. 631.
(*p*) Sub-sect. (12).
(*q*) S. L. Act, s. 104 (4), above, p. 629.

powered to convey is the estate or interest vested or declared to be vested in him by the last or only vesting instrument affecting the settled land (*r*).

2. Such conveyance will overreach all "equitable" interests or powers subsisting or capable of arising under the "settlement" (*s*).

3. There will be excepted from the operation of the conveyance only such "legal" estates or charges as are specified in paragraphs (i), (ii) and (iii) of sub-sect. (2) of sect. 72 (*t*).

4. The consent of assignees for value of the tenant for life's beneficial interest will not be required, or, if it is required, the purchaser will not be concerned to see that it is obtained (*u*).

5. Except in the case of a *first* vesting instrument, and subject to the purchaser's right (so far as not barred or curtailed by the contract) to a thirty years' title, the purchaser will not be concerned or entitled to require the production of, or to any information regarding, the "trust instrument" (*x*) or the settlor's title (*y*).

6. The purchaser will be entitled to be satisfied as to the existence or otherwise of any *excepted* legal estates or charges, and, if there be any such subject to which the land is not expressly sold, to have the same discharged by the concurrence in the conveyance of the persons entitled thereto or otherwise.

As we have seen, a tenant for life may now, in certain cases and on certain conditions, sell otherwise than for money (*z*).

Treatise, pp. 311-313. As to tenant for life's fiduciary position.

(*r*) S. L. Act, s. 72, sub-s. (1), above, p. 326.

(*s*) Sub-sect. (2); *ib.* If there is a compound settlement it will be *the* settlement: above, p. 260.

(*t*) *Ib.*

(*u*) S. L. Act, s. 104, above, p. 629.

(*x*) Above, p. 281.

(*y*) S. L. Act, s. 110 (2) and proviso, above, pp. 344 *et seq.*

(*z*) S. L. Act, s. 39, above, pp. 312 to 315. As to the power to sell timber or fixtures at a valuation, see sect. 49 (2), above, p. 317.

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Treatise, Chap. IX. pp. 313-334.

§ 3.—Powers of Sale under Mortgages.

i. *Repeals and Re-enactments.*

As we have seen, the Conveyancing Acts, 1881 to 1911, are repealed (*a*).

The following Table specifies in the first column such enactments, repealed by the Property Act, as are referred to in this section of Chapter IX. of the Treatise, and in the second column the enactments (if any) by which they are replaced (*b*).

Repealed enactment.	Substituted enactment.
C. Act, 1881, s. 1	Not re-enacted.
s. 2 (vi)	L. P. Act, s. 205 (1) (xvi) (*c*).
s. 19 (1) (i)	s. 101 (1) (i).
(ii)	(ii).
(iii)	(iii).
(iv)	(iv).
C. Act, 1911, s. 4 (1) (3)	(2).
C. Act, 1881, s. 19 (2) / C. Act, 1911, s. 4 (2)	(3).
C. Act, 1881, s. 19 (3) / C. Act, 1911, s. 2	(4).
C. Act, 1881, s. 19 (4)	(5).
s. 20	s. 103.
s. 21 (1)	s. 104 (1).
(2) / C. Act, 1911, s. 5 (1)	(2).
C. Act, 1881, s. 21 (3)	s. 105.
(4)	s. 106 (1).
(5)	(2).
(6) / C. Act, 1911, s. 5 (2)	(3).
C. Act, 1881, s. 21 (7)	(4).
s. 22	s. 107.
C. Act, 1911, s. 16 (2)	Not re-enacted.
T. Act, 1893, s. 44 / T. Act, 1894, s. 3	L. P. Act, s. 92.

(*a*) With some few exceptions, above, Part I., p. 17.
(*b*) See Explanatory Note, above, p. 562.
(*c*) See Table of Definitions, above, Part I., Chapter VII.

ii. *Substantive Amendments.*

Treatise, pp. 315, 316. "Purchaser's protection under Conveyancing Act, 1881." "Purchaser's protection under Conveyancing Act, 1911." "*Professed* exercise."

Sub-sect. (2) of sect. 104 of the Property Act reproduces, with some amendments, the combined effect of sub-sect. (2) of sect. 21 of the Conveyancing Act, 1881, and sub-sect. (1) of sect. 5 of the Conveyancing Act, 1911. These amendments include the omission of the word "professed" before the word "exercise." Moreover, sub-sect. (3) of the same section of the Property Act provides that a conveyance on sale by a mortgagee, made after the commencement of that Act, shall be deemed to have been made in exercise of the power of sale conferred by that Act, unless a contrary intention appears. In the past, where a mortgagee is in fact selling in exercise of his statutory power, it has been the almost invariable practice to refer expressly to the power both in the contract for sale and in the conveyance; and this practice, notwithstanding the above changes in the law, will, no doubt, be continued.

Treatise, p. 317. "What estate the mortgage can convey."

Sub-sects (1) to (4) of sect. 101 of the Property Act re-enact sect. 19 of the Conveyancing Act, 1881, and sect. 4 of the Conveyancing Act, 1911, whereby divers powers, including a power of sale, are conferred on a mortgagee. Sub-sect. (6) of sect. 101 is new, and provides as follows:—

> (6) The power of sale conferred by this section includes such power of selling the estate in fee simple or any leasehold reversion as is conferred by the provisions of this Act relating to the realisation of mortgages.

It will be remembered that since the commencement of the Property Act a legal mortgage of freeholds can take effect only as a mortgage by demise, and a mortgage of leaseholds only as a mortgage by sub-demise or, in either case, by its equivalent, a charge by way of legal mortgage (*d*). It is accordingly provided (*e*), in effect, that, subject to any prior mortgage, a conveyance by a mortgagee of freeholds, selling under his express or statutory power, shall operate to vest in the purchaser the fee simple in the land conveyed, and a like conveyance by a mortgagee of leaseholds shall operate to convey to the pur-

(*d*) Above, Part III., Chapter III., p. 111.

(*e*) L. P. Act, ss. 88, 89, above, *ib.*, pp. 123 *et seq.* As to contracts for sale by a mortgagee, see L. P. Act, s. 42 (4) (i), above, p. 140.

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chaser (unless expressly excepted with the leave of the Court) the leasehold reversion, and that, in either case, the mortgage term shall merge or be extinguished, and the conveyance may, as respects the fee simple or the leasehold reversion, as the case may be, be made in the name of the estate owner in whom it is vested.

Treatise, p. 318. "Copyholds."

On the enfranchisement of copyhold land under the Property Act, 1922 (*f*), any then subsisting mortgage of the copyhold estate became a mortgage of the land for a term of years absolute (*g*).

Treatise, pp. 318, 319. "Conveyance, &c. should be in *professed* exercise of the statutory power."

The omission of the word "professed" in sub-sect. (2), and the provisions of sub-sect. (3) of sect. 104 of the Property Act have already been noticed (*h*).

As we have seen (*i*), the right to tack is abolished by sect. 94 of the Property Act, save in regard to the making of further advances as provided by that section (*k*).

Treatise, p. 321. *Bailey* v. *Barnes*.

Treatise, p. 321. "Sale by mortgagee in possession after mortgagor's title barred."

It is thought that a mortgagee who has acquired a title under the "Limitation Acts" (*l*) may still exercise his statutory power of sale so long as he has not, in the case of a mortgage of freeholds, enlarged his mortgage term into a fee simple and, in the case of a mortgage of leaseholds, executed a deed declaring that the leasehold reversion shall vest in him (*m*); for by so doing he would appear to have elected to stand upon his acquired statutory title, and when selling subsequently would have to satisfy the purchaser that it had been acquired.

Treatise, p. 322. "Sale after foreclosure absolute."

Where, after the commencement of the Property Act, a mortgagee obtains an order for foreclosure absolute, the order operates to vest in him the fee simple or, in the case of leaseholds, unless the order otherwise provides, the leasehold rever-

(*f*) Above, Part II., Chapter II.

(*g*) L. P. Act, 1922, Twelfth Schedule, para. (1) (f), above, p. 74.

(*h*) Above, p. 637.

(*i*) Above, Part III., Chapter III., p. 127.

(*k*) As amended by the L. P. Act, 1926, s. 7 and Sched., above, p. 555.

(*l*) See Table of Definitions, above, Part I., Chapter VII.

(*m*) Under the powers conferred by sects. 88 (3) and 89 (3) of the L. P. Act, above, pp. 124, 125.

sion and to merge the mortgage term (*n*). Such being the effect of the order, it may be doubted whether the mortgagee can thereafter exercise his statutory power of sale, for the estate to which the power was incident has gone. Before the Act the effect of an order for foreclosure absolute was not to enlarge or alter the estate of the mortgagee, but only to discharge it from the right or equity of redemption.

Treatise, p. 325. Courts (Emergency Powers) Acts.

By sects. 2 and 3 of the Expiring Laws Act, 1925 (*o*), and Part I. of the Second Schedule thereto, the Courts (Emergency Powers) Act, 1914, so far as it relates to orders made by any Court before the 31st August, 1922, and the Acts amending the same, are continued until the 31st December, 1926.

Treatise, p. 331. Increase of Rent and Mortgage Interest (Restrictions) Act, 1920.

By the Rent and Mortgage Interest (Restrictions Continuation) Act, 1925 (*p*), the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, as amended by any subsequent enactment, is continued in force until the 25th December, 1927; and Part II. of the Rent and Mortgage Interest (Restrictions) Act, 1923 (*q*), is continued in force until five years after the expiration of the Act of 1920.

(*n*) L. P. Act, ss. 88 (2), 89 (2), above, *ib.*
(*o*) Stat. 15 & 16 Geo. 5, c. 76, passed 10th December, 1925.
(*p*) Stat. 15 & 16 Geo. 5, c. 32.
(*q*) See Further Addenda, Treatise, Vol. II., pp. xliii *et seq.*

Treatise, Chap. X. pp. 335 to 479. § 1, pp. 335 to 339.

SECTION X.

OF PARTICULAR TITLES.

§ 1.—*Sale of Copyholds.*

Application of this sect. of Chap. X. of the Treatise.

All copyhold land has been enfranchised by the Law of Property Act, 1922 (*a*); but this section of this chapter of the treatise will still be of assistance when it is necessary to investigate the copyhold title of a person who claims to be, or to derive title under, the person in whom the "enfranchised land" was vested by virtue of that Act (*b*).

Title to "enfranchised land."

Where title is being made to "enfranchised land," the purchaser, in the absence of stipulation to the contrary, will be entitled to a thirty years' title (*c*), that is, for some time to come, to the freehold title back to the commencement of the Law of Property Act, 1922, and to the copyhold title back to a satisfactory root of title (*d*) not later in date than thirty years before the date of the contract.

Points to be attended to:
1. Vesting of freehold resulting from enfranchisement.
2. Manorial incidents.
3. Endorsement of "assurances."

In such a case the vendor must show by reference to the copyhold title that he or some person under whom he claims was the person in whom, on the statutory enfranchisement of the land, the resultant freehold estate in fee simple vested by virtue of the Act (*e*). The purchaser must see that the "manorial incidents," if any, have been or, before completion, will be, duly extinguished (*f*); and that any "assurance" of the land, pending such extinguishment, was produced to the

(*a*) L. P. Act, 1922, Part V. and Twelfth Schedule, as amended by L. P. Act, 1924, s. 2 and Second Sched., para. 4 (1), (2), above, Part II., Chapter II.
(*b*) See L. P. Act, 1922, ss. 128, 189, above, pp. 56 and 62, and the "Effect of Enfranchisement," above, Part II., Chapter II., Section iv., pp. 70 *et seq.*
(*c*) L. P. Act, s. 44 (1), above, p. 134.
(*d*) See Treatise, Vol. I., p. 100.
(*e*) L. P. Act, 1922, Twelfth Schedule, para. (8), as amended by L. P. Act, 1924, Second Schedule, para. 4 (1), (2), above, pp. 70 *et seq.*
(*f*) Above, Part II., Chapter III.

steward and duly endorsed by him (*g*). He should also ascertain what is the position in regard to the mines and minerals and any rights preserved to the lord of the manor by the Twelfth Schedule to the Law of Property Act, 1922, and as to the subsistence of any liability for the construction or maintenance of protective works and whether any land charge has been registered in respect of the same (*h*). The purchaser will not be entitled to call for, or be affected with notice of, the title of the person entering into any compensation agreement (*i*) or giving a receipt for the compensation money to enter into such agreement or to give such receipt (*i*). If a compensation rentcharge (*i*) has been created, it must be duly discharged on or before completion.

4. Mines and minerals.
5. Lord's rights.
6. Liability to construct works.
7. Lord's title.
8. Compensation rentcharge.

§ 2.—Sale of Leaseholds.

Treatise, pp. 339 to 360.

i. *Repeals and Re-enactments* (*k*).

The following table shows enactments, referred to in this Part of Chapter X. of the Treatise, which are repealed and the enactments, if any, replacing the same respectively:—

Repealed enactment.	Substituted enactment.
C. Act, 1881, s. 3 (4)	L. P. Act, s. 45 (2) (*l*).
(5)	(3) (*l*).
(6)	(4) (*l*).
(9)	(10) (*l*).
(10)	Not re-enacted.
(11)	L. P. Act, s. 45 (11) (*l*).
s. 14	s. 146 (*m*).
C. Act, 1892, s. 3	s. 144.
C. Act, 1881, s. 65	s. 153 (*n*).
C. Act, 1882, s. 11	
Satisfied Terms Act, 1845, s. 2	s. 5 (1) (*o*).
Judicature Act, 1873, s. 25 (4)	s. 185.

(*g*) L. P. Act, 1922, s. 129, above, p. 63.
(*h*) *Ib.*, Twelfth Schedule, paras. (5), (6) and (7), above, pp. 75, 76, 81.
(*i*) L. P. Act, s. 44 (7), above, p. 135. As to compensation agreements and compensation rentcharges, see above, p. 80.
(*k*) See Explanatory Note, above, p. 562.
(*l*) See above, Part III., Chapter IV.
(*m*) Above, p. 233. (*n*) Above, *ib.* (*o*) Above, p. 105.

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ii. *Substantive Amendments.*

Treatise, p. 350. "Sale of part of land held by lease for years."

Where, after the commencement of the Property Act, part of land comprised in a lease is conveyed, otherwise than by way of mortgage, for valuable consideration, for the residue of the term created by the lease, and the rent reserved by the lease or a part thereof is, without the consent of the lessor, charged exclusively or apportioned as mentioned in sub-sect. (3) of sect. 190 of the Property Act, the provisions of that section will apply (*p*).

Treatise, p. 352. "Sale of renewable leaseholds."

Conversion into long terms.

Vesting of term.

Title.

As we have seen (*q*), by virtue of Part VII. of the Law of Property Act, 1922, all perpetually renewable leases and underleases subsisting at the commencement (*r*) of that Act have been converted into long terms or sub-terms in accordance with the provisions of the Fifteenth Schedule to that Act, as amended by the Second Schedule to the Law of Property (Amendment) Act, 1924. The term or sub-term so created was to vest in the person who at such commencement was "entitled to" the converted lease or underlease (*s*); and, as Part VII. of the Act of 1922 is not to operate to confer any better title to any term or sub-term thereby created than the perpetually renewable term or sub-term which it replaces (*t*), it is thought that this passage of the Treatise, with the substitution of thirty years for forty years (*u*), and of references to the new for references to the repealed enactments (*v*), will apply to the title to be shewn to a converted lease or underlease. This will be so, however, with the modification that, in favour of a purchaser, endorsement within one year after the commencement of the Act of 1922 by the lessor or his solicitor or agent on the lease or underlease of notice of the fact that a perpetual right of renewal was subsisting at such commencement is sufficient, and the only proper, evidence that the right of renewal was so subsisting (*w*).

Right of renewal.

(*p*) Above, Part III., Chapter XV., p. 247.
(*q*) Above, Part II., Chapter IV.
(*r*) See L. P. Act, s. 202, above, p. 9.
(*s*) L. P. Act, 1922, Fifteenth Schedule, paras. 1 (1) and 2 (1), above, pp. 90, 91.
(*t*) *Ib.*, para. 4 (1).
(*u*) See L. P. Act, s. 44 (1), above, p. 134.
(*v*) See the Table, above, p. 641.
(*w*) See L. P. Act, 1922, Fifteenth Schedule, para. 10 (1) (iii), above, p. 92.

Commutation of renewal fines.

The purchaser should also see that the renewal fines have been commuted either by payment of an additional annual rent or by payment of a capital sum in commutation or discharge of any claims in respect of additional rent (*x*). If these and certain other matters capable of being so agreed are agreed between the "lessor" (*y*) and "lessee" (*y*) or "underlessee" (*y*), a statement in writing respecting any such agreement, which is endorsed on the lease or underlease, and signed by the lessor and lessee or underlessee, will be conclusive evidence of the matters stated (*z*). As the converted lease or underlease will always be an essential part of the title of the lessee or underlessee or persons deriving title under him, provision is made for the deposit at the Central Office of the Supreme Court of the original or counterpart of any lease or underlease or assignment to which Part VII. of the Act of 1922 applies, and for the furnishing of an office copy of any instrument so deposited with any plan or endorsements thereon, and the office copy will be sufficient evidence of the contents of the original (*a*).

By agreement.

Office copies.

Treatise, pp. 353 to 355.

"Satisfied terms."

As we have seen (*b*), the Satisfied Terms Act, 1845, is repealed (*c*), and sect. 2 of that Act is re-enacted by sub-sect. (1) of sect. 5 of the Property Act, with the modification that the satisfied term is to merge whether or not, either by express declaration or by construction of law, it becomes attendant upon the inheritance. Sub-sect. (2) of the same section provides for the merger of a term of years created or limited out of leasehold land on its becoming satisfied *after* the commencement of the Act, and the merger of such a term which was satisfied *at* the commencement of the Act is effected by paragraph 1 of Part II. of the First Schedule to the Act (*d*). The effect of these enactments as to sub-terms is to overrule the decision in *In re Moore and Hulm's Contract*, (1912) 2 Ch. 105 (*e*).

(*x*) *Ib.*, paras. 12, 14.
(*y*) For the definitions of these expressions in Part VII. of the L. P. Act, 1922, see L. P. Act, 1922, s. 190, above, p. 89.
(*z*) L. P. Act, 1922, Fifteenth Schedule, para. 14. If the parties cannot agree, the matters in dispute must be submitted to the Minister of Agriculture and Fisheries: *ib.*, para. 16.
(*a*) *Ib.*, para. 20, above, p. 95.
(*b*) Above, Part III., Chapter II., pp. 105 *et seq.*
(*c*) L. P. Act, s. 207 and Seventh Schedule.
(*d*) Above, p. 106.
(*e*) *Ib.*, n. (*d*), and Treatise, p. 355, n. (*z*).

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Treatise, p. 357. "Land held for long term enlarged into fee simple."

The provisions here referred to of the Conveyancing Acts, 1881 and 1882, are repealed (*f*) and re-enacted, with some modifications, by sect. 153 of the Property Act (*g*). In this passage of the Treatise thirty years must be substituted for forty years as the period of title to be shewn (*h*).

Treatise, p. 357. "Leaseholds settled on trust to go with freeholds."

Entailed interests.

After the commencement of the Property Act, an "entailed interest," that is, an interest in tail, or in tail male, or in tail female, or in tail special, may be created by way of trust in *any* property, real or personal (*i*); and, where personal estate (including the proceeds of land directed to be sold, and chattels directed to be held as heirlooms) is, *after* the commencement of the Act, directed to be enjoyed or held with, or upon trusts corresponding to trusts affecting, land in which, *either before or after* the commencement of the Act, an entailed interest has been created and is subsisting, such direction is to be deemed sufficient to create a corresponding entailed interest in such personal estate (*k*).

Treatise, p. 359. "Reversionary leases."

As we have seen, the doctrine of *interesse termini* is abolished (*l*); and a term, at a rent or granted in consideration of a fine, limited after the commencement of the Property Act to take effect more than twenty-one years from the date of the instrument purporting to create it, or a contract made after such commencement to create such a term, will, as a general rule, be void (*m*).

Treatise, pp. 361 to 376.

§ 3.—Sale of Lands in a Register County or Compulsory Registration District.

Treatise, p. 361. "Lands in Middlesex or Yorkshire."

As we have seen, it is not necessary to register a memorial of any instrument made after the commencement of the Property Act in any local deeds registry unless the instrument operates to transfer or create a legal estate or to create a charge thereon by way of legal mortgage (*n*).

(*f*) Above, p. 17.
(*g*) Above, p. 233.
(*h*) L. P. Act, s. 44 (1), above, p. 134.
(*i*) L. P. Act, s. 130 (1), above, p. 181.
(*k*) *Ib.* (3), p. 182.
(*l*) L. P. Act, s. 149 (1), above, p. 102.
(*m*) *Ib.* (2).
(*n*) L. P. Act, s. 11 (1), above, p. 200. See also above, p. 415, and for the new sub-sect. (6) of sect. 10 of the L. C. Act, see L. P. Act, 1926, s. 7 and Schedule, above, p. 559.

The Land Registry (Middlesex Deeds) Rules, 1892, referred to in note (*l*) on this page of the Treatise are rescinded and replaced by the Land Registry (Middlesex Deeds) Rules, 1926 (*o*).

Treatise, p. 361, n. (*l*). Middlesex Deeds Rules.

Sect. 8 of the Vendor and Purchaser Act, 1874, is repealed (*p*) and not re-enacted; and it is now provided that (*q*) probates and letters of administration shall be treated as instruments capable of transferring a legal estate to a personal representative; and that memorials of all instruments capable of transferring or creating a legal estate or charge by way of legal mortgage may, when so operating, be registered (*r*). In the case of a person dying after the commencement of the Administration Act (*s*), there can, of course, be no person claiming any land of the deceased by descent as heir-at-law (*t*).

Treatise, p. 363. "Wills."

Heirship.

As land held for a term of years absolute is a "legal estate" (*u*), a memorial of a probate or letters of administration affecting leaseholds in Middlesex or Yorkshire may be registered in the local deeds registry (*v*).

Treatise, p. 366. "Wills of leaseholds."

There are in these pages of the Treatise numerous references to the Land Transfer Acts, 1875 and 1897, and to the Rules made thereunder. These Acts and Rules are, as we have seen, with some few exceptions, repealed and replaced respectively by the Registration Act and the Land Registration Rules, 1925 (*w*); except that certain of the repealed Rules are incorporated in the text of the Registration Act (*x*).

Treatise, pp. 367 to 373. Repeal of Land Transfer Acts, 1875 and 1897, and of Land Transfer Rules, 1903 to 1908.

The sections of the repealed Acts referred to in this passage and in the notes (*a*) to (*d*) thereto are re-enacted respectively, without amendment, by sects. 135, 6, 7 and 81 (3) of the Registration Act (*x*). Rule 48 of the Land Transfer Rules, 1908, referred to in note (*a*), is re-enacted textually by Rule 43

Treatise, p. 367. "Lands registered in the land registry."

(*o*) S. R. & O., 1926, No. 32/L. 5, 1926, W. N., Part II., p. 112.
(*p*) L. P. Act, s. 207 and Seventh Schedule.
(*q*) For the purpose of registration under sect. 11 (1), above, of the L. P. Act.
(*r*) L. P. Act, s. 11 (2), (3), above, p. 201.
(*s*) See A. E. Act, s. 54, above, p. 15.
(*t*) A. E. Act, s. 45, above, p. 449.
(*u*) L. P. Act, s. 1, above, p. 97.
(*v*) L. P. Act, s. 11, above, p. 200.
(*w*) Above, p. 459. (*x*) See the Table, above, pp. 460 *et seq.*

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Treatise, pp. 367 to 370. "Lands in district where registration of title is compulsory on sale." "Leaseholds." Changes in the law. L. R. Act, s. 123.

of the Land Registration Rules, 1925. The provisions relating to compulsory registration, referred to in this passage and in the notes thereto, of the Land Transfer Act, 1897, and the Land Transfer Rules, are replaced, with important amendments, by sect. 123 of the Registration Act (*y*), which, in an area where registration is compulsory, avoids any "conveyance on sale" (*z*), lease, or "assignment on sale" (*z*), to which the section applies, on the expiration of two months from the date thereof, or of any authorised extension of that period (*a*), so far as regards the grant or conveyance of the legal estate in the freehold or leasehold land affected, unless the "grantee" (that is, the person entitled to be registered (*b*)) or his successor in title or assign has in the meantime applied to be registered as proprietor (*a*).

Legal estate outstanding at commencement of L. R. Act.

Provision is made for the vesting in the person registered after the commencement of the Registration Act as first proprietor of land in a compulsory area, of a legal estate left outstanding by reason of non-registration before such commencement (*c*).

Treatise, p. 370. "Term created for mortgage purposes." Term to raise portions.

Since the commencement of the Registration Act a mortgage term, wherein no right of redemption is subsisting, may be registered. A term limited by a settlement on the usual trusts to raise portions for younger children (*d*) is a "minor interest" (*e*) and, as such, not capable of registration; but, if by means of the term the portions should have been actually raised, the person advancing the money would be entitled to a charge under sect. 90 of the Registration Act (*f*), and on the registration of the charge (*g*), would have all the powers conferred by law on the owner of a legal mortgage (*h*), and, on the "realisation" of his charge, he or the purchaser from him would be entitled to be registered as proprietor of the land (*h*).

(*y*) Above, Part VIII., Chapter XI., p. 535.
(*z*) See L. R. Act, s. 123 (3), above, p. 536.
(*a*) *Ib.*, sub-sect. (1), above, p. 535.
(*b*) As to who may apply to be registered, see L. R. Act, ss. 4 and 8, above, Part VIII., Chapter III., pp. 474 *et seq.*, superseding the enactments referred to in nn. (*i*) and (*o*) to this passage of the Treatise.
(*c*) L. R. Act, s. 69 (3), above, Part VIII., Chapter III., p. 479.
(*d*) See S. L. Act, First Schedule, Form No. 3.
(*e*) See above, p. 472.
(*f*) Above, p. 520. (*g*) See L. R. Rules, 144.
(*h*) L. R. Act, s. 34, above, pp. 490, 491.

Treatise, p. 370. "Title deduced subsequently to an occasion requiring registration."

Outstanding legal estate.

We have seen (*i*) that a legal estate outstanding at the commencement of the Registration Act, by reason of non-registration of land in a compulsory area, will vest in the person who is registered as first proprietor of the land. But suppose that the necessity for registration in a compulsory area should first have arisen after such commencement and that the "grantee" should have failed to apply to be registered within the two months allowed by sub-sect. (1) of sect. 123 of the Act (*k*), and, owing to long delay, should be unable to obtain an extension of time under the proviso to that sub-section (*k*), it would appear that, in such a case, no means of curing the defect of title is supplied by the Act.

Treatise, p. 371. "First registration." L. R. Act, s. 123.

Legal estate vests subject to being divested.

Semble, legal estate revests in grantor on failure to register.

As under section 123 of the Registration Act (*k*) it rests upon the "grantee" to apply to be registered, and he has two months, or such extended time as may be allowed, in which to do so, it appears that the vendor is in no way concerned with the purchaser's registration and can claim payment of the purchase money before the purchaser's title is completed by registration. Indeed, it seems that under the section (*k*) the legal estate passes on the execution of the conveyance, subject to being divested on the failure of the grantee to apply to be registered within the time allowed for that purpose. It is thought that, on such failure, the legal estate will revest in the grantor or other the person or persons on whom the land would have devolved, if it had not been conveyed, granted or assigned.

Treatise, p. 372. "Sale of leaseholds in compulsory district."

The desirability of stipulating that the purchaser shall procure the registration of the title within a specified time (*l*), especially in the case of leasehold land, as pointed out in this passage, is in no way affected by the changes in the law.

Treatise, p. 372 and n. (*x*). "Priority notice," &c.

The rule here referred to is re-enacted, without amendment, by rule 71 of the Land Registration Rules, 1925. Form 17, referred to in the latter rule, is identical with Form 18 (*m*), referred to in the former rule.

Treatise, p. 373 and n. (*y*).

Rule 96 of the Land Transfer Rules, 1903, applied to land, whether or not situate within a compulsory area, as does the

(*i*) Above, p. 479. (*k*) Above, p. 535.

(*l*) That is, at the latest, within two months from the date of the conveyance, as required by L. R. Act, s. 123.

(*m*) As amended by the Schedule to the L. T. Rules, 1907.

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substituted rule 72 of the Land Registration Rules, 1925. The doubt raised in this passage as to the effect of a transfer or charge under the replaced rule of land in a compulsory area is removed by the following new rule (*n*), which has been made under sub-sect. (2) of sect. 123 of the Registration Act (*o*):—

"Registered transfer or charge by the purchaser before his own registration."

L. R. Rules, 73.

Effect of dealings prior to first registration.

73.—(1) Pursuant to subsection (2) of section 123 of the Act, it is hereby provided that any dealing with land which takes place between the date of a conveyance, grant, or assignment necessitating compulsory registration of land and the date of application to register, shall (subject to the provisions of subsection (1) of the said section) take effect as if it had taken place after the date of first registration, which shall be effected as of the date of the application to register.

(2) Where a dealing is a charge or other incumbrance, capable of registration in the Charges Register of the title affected, the person for the time being entitled to it shall have power to lodge an application on behalf of the proper applicant for the first registration of the estate on which such charge or incumbrance has been created.

Treatise, pp. 373 to 375. Undivided shares.

As "land" in the Consolidation Acts does not include an undivided share in land (*p*), and an undivided share in land cannot be registered under the Land Registration Act (*q*), the questions discussed in these passages of the Treatise can no longer arise.

§ 4.—Voluntary Conveyances.

Treatise, pp. 376 to 380.

Ib. p. 376.

"Voluntary conveyances."

L. P. Act, s. 173.

Voluntary disposition of land how far voidable as against purchasers.

The statute 27 Eliz. c. 4 and the Voluntary Conveyances Act, 1893, are repealed (*r*) and replaced by the following section (*s*) of the Property Act:—

173.—(1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

(2) For the purposes of this section, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made, if such subsequent conveyance was made after the twenty-eighth day of June, eighteen hundred and ninety-three (*t*).

(*n*) L. R. Rules, 73. (*o*) Above, p. 536.
(*p*) See Table of Definitions, above, Part I., Chapter VII.
(*q*) See above, Part VIII., Chapter II.
(*r*) L. P. Act, s. 207 and Seventh Schedule.
(*s*) It is thought that this section in no way alters the law.
(*t*) That is, after the commencement of the Voluntary Conveyances Act, 1893.

The stat. 13 Eliz. c. 5, is repealed and replaced by the following section of the Property Act (*u*):—

Treatise, p. 376. "Tending to defeat or delay creditors."

172.—(1) Save as provided in this section, every conveyance of property, made whether before or after the commencement of this Act, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.

L. P. Act, s. 172.

(2) This section does not affect the operation of a disentailing assurance, or the law of bankruptcy for the time being in force.

(3) This section does not extend to any estate or interest in property conveyed for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the conveyance, notice of the intent to defraud creditors.

Voluntary conveyances to defraud creditors voidable.

§ 5.—Sale of Ground Rents, Reversions and Remainders, Mines, Roads, Rivers, &c.

Treatise, pp. 381 to 415.

i. *Repeals and Re-enactments* (*v*).

Repealed enactment.	Substituted enactment.
32 Hen. 8, c. 34 (*w*)	Not re-enacted (*x*).
4 & 5 Anne, c. 3, s. 9	L. P. Act, s. 151 (1).
R. P. Act, 1845, s. 6	s. 4 (2) (*y*).
Lord St. Leonards' Act, s. 3	Not re-enacted.
31 & 32 Vict. c. 4	L. P. Act, s. 174 (*z*).
C. Act, 1881, s. 10 (1)	s. 141 (1) (2).
(2)	(4).
s. 12 (1)	s. 140 (1).
(2)	(4).
s. 18	s. 99 (*a*).
S. L. Act, ss. 6—12, 20	[See Table, above, p. 311].
C. Act, 1911, s. 2	L. P. Act, s. 141 (3).

(*u*) It is thought that this section in no way alters the law.
(*v*) See Explanatory Note, above, p. 562.
(*w*) Repealed L. P. Act, s. 207 and Seventh Schedule.
(*x*) Except as incorporated in, or extended by, L. P. Act, ss. 141, 142.
(*y*) See above, p. 195.
(*z*) See below, Section XIV., p. 714.
(*a*) See above, p. 130.

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ii. *Substantive Amendments.*

Treatise, p. 381. "Ground rent."

"Thirty years old" should be substituted for "forty years old" on this page of the Treatise (*b*).

Treatise, p. 382. "Inquiries on purchase of reversion on a lease."

Rights of occupant.

L. P. Act, s. 14.

L. R. Act, s. 70.

The rights and claims of an occupying tenant are clearly recognised in the new legislation. Thus sect. 14 of the Property Act provides that that Part (*c*) of that Act shall not prejudicially affect the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation; and, for the purposes of the Registration Act (*d*), "overriding interests" include "the rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, save where enquiry is made of such person and the rights are not disclosed." The words "and the rights are not disclosed" suggest that, at any rate in the case of registered land, an occupying tenant who refuses to answer inquiries as to his rights by an intending purchaser may be debarred from thereafter setting up against the purchaser any rights of which the latter could have had notice only if the same had been disclosed in answer to the inquiries, *e.g.*, any rights inconsistent with, or in excess of, those disclosed by the documentary title. They suggest also the advisability, whether the land be registered or not, of keeping a record of the inquiries made and, if information be refused, of the fact of such refusal.

Tenant refusing information.

Treatise, pp. 386 to 388. Rights of assignee of reversion.

L. P. Act, s. 141.

Ib. subs. (4). Application of section.

Sub-sects. (1), (2) and (3) of sect. 141 of the Property Act re-enact, without amendment (*e*), the respective provisions of sect. 10 of the Conveyancing Act, 1881, and sect. 2 of the Conveyancing Act, 1911. Sub-sect. (4) of sect. 141 is as follows:—

> (4) This section applies to leases made before or after the commencement of this Act, but does not affect the operation of—
>
> (a) any severance of the reversionary estate; or
>
> (b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent covenant or provision;
>
> effected before the commencement of this Act.

(*b*) L. P. Act, s. 44 (1), above, p. 134.
(*c*) Namely, Part I.; see above, p. 219.
(*d*) L. R. Act, s. 70 (1) (g), above, p. 468.
(*e*) Except that they omit sub-sect. (2) of sect. 10 of the C. Act, 1881, and the proviso to sub-sect. (1) of sect. 2 of the C. Act, 1911, and that sub-sect. (1) *expressly* saves "any liability of a covenantor or his estate," not thereby altering the law.

The effect of this sub-section appears to be merely to prevent sub-sects. (1), (2) and (3) from applying to any case to which the repealed enactments would not have applied. It is thought, therefore, that sect. 141 of the Property Act in no way alters the law as stated or laid down on pp. 386 to 388 of the Treatise, or in the cases cited in the notes thereto, in regard to the operation and effect of the enactments replaced by that section.

Effect of subs. (4).

Semble, law unaltered by L. P. Act, s. 141.

As we have seen (*f*), in the case of settled land, the legal estate must always be vested in the person who is for the time being entitled to exercise the statutory powers of disposition conferred by the Settled Land Act, that is, the tenant for life or statutory owner.

Treatise, p. 386. "In leases granted under statutory powers."

Since the repeal of the Statute of Uses (*g*), there can, of course, be no power of leasing exercisable by means of that Statute. Where powers of leasing are conferred by a will, the land in relation to which the powers are conferred will, in most cases, be "settled land" (*h*), and the powers will be exercisable by the "tenant for life" (*h*) or "statutory owner" (*i*).

"In other leases."

Since the commencement of the Property Act a tenant for life of the reversion in the whole of the lands demised by a lease can, so far as his beneficial interest is concerned, take only an "equitable interest" (*k*), but the "legal estate" (*k*) in the reversion must be vested in him, if he be of full age, and, if not, in the statutory owner (*l*), and the "estate owner" (*m*) will, of course, have the benefit of sect. 141 of the Property Act, replacing the enactments referred to in this passage of the Treatise.

Treatise, pp. 388, 389. "Rights of assignee of part of the reversion on a lease."

The assignee's right of action will now be under the last-mentioned section, the stat. 32 Hen. 8, c. 34, being repealed (*n*).

Treatise, p. 389. "Severance of reversion on a lease for years."

The provisions of Lord St. Leonards' Act and of the Conveyancing Acts referred to in this passage are repealed (*n*) and replaced by the following section of the Property Act:—

Treatise, pp. 389, 390. "Its effect on conditions of re-entry."

L. P. Act, s. 140. Apportionment of

140.—[(1) Notwithstanding the severance by conveyance, surrender, or otherwise of the reversionary estate in any land comprised

(*f*) Above, Part IV., Chapter I., pp. 252 *et seq.*
(*g*) Above, p. 103.
(*h*) Above, Part IV., Chapter II.
(*i*) *Ib.*, Chapter I.
(*k*) Above, Part III., Chapter I.
(*l*) Above, Part IV., Chapter I.
(*m*) See Table of Definitions, above, Part I., Chapter VII.
(*n*) See the Table, above, p. 649.

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conditions on severance. [C. Act, 1881, s. 12 (1).]

in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.]

(2) In this section "right of re-entry" includes a right to determine the lease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice.

(3) This section applies to leases made before or after the commencement of this Act and whether the severance of the reversionary estate or the partial avoidance or cesser of the term was effected before or after such commencement:

Provided that, where the lease was made before the first day of January eighteen hundred and eighty-two (*o*) nothing in this section shall affect the operation of a severance of the reversionary estate or partial avoidance or cesser of the term which was effected before the commencement of this Act.

Subs. (2). "Lease."

In the Property Act, unless the context otherwise requires, "lease" includes an underlease *or other tenancy* (*p*). Hence it includes a tenancy from year to year or any other tenancy,

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which may be determined by notice to quit. It will be seen that this sub-section alters the law as stated in the passage on p. 390 of the Treatise, the marginal note to which is "Notice to quit when the reversion has been severed," and overrules the cases cited in note (*l*) to that passage, while giving the tenant the right to give a counter notice determining the tenancy in regard to the rest of the land.

Treatise, pp. 390, 391. "Notices to quit with a view to sale."

The provisions, referred to in this passage, of the Acts of 1919 and 1920 therein mentioned, are replaced by corresponding provisions of the Agricultural Holdings Act, 1923 (*q*).

(*o*) That is, before the commencement of the C. Act, 1881: see sect. 12 (2) of that Act.

(*p*) See Table of Definitions, above, Part I., Chapter VII. There is no definition of "lease" in the C. Act, 1881.

(*q*) See Addenda, Treatise, Vol. II., pp. xxxix, xl.

Since the commencement of the Property Act a reversion or remainder expectant on a life or other limited interest can take effect only as an "equitable interest" (*r*). As we have seen (*s*), the priority of dealings with equitable interests in land, capital money, and securities representing capital money, effected after the commencement of the Act, is governed by the rule in *Dearle* v. *Hall*. Accordingly, an intending purchaser or mortgagee of an interest in remainder or reversion should, before completing the transaction, inquire of the trustees of the settlement (*t*) whether they have notice of any dealing with the remainder or reversion, and, if the reply is such as to enable the transaction to proceed, should, on completion, forthwith give notice thereof *in writing* (*u*) to such trustees.

Treatise, p. 391 and n. (*x*). "Reversions or remainders on an estate of freehold."

As we have seen (*v*), sect. 72 of the Settled Land Act replaces, with some amendments, sect. 20 of the Settled Land Act, 1882. The cases of *Re Dickin and Kelsall's Contract* and *Re Davies and Kent's Contract*, cited in note (*z*) to this passage of the Treatise, decided that exception (ii) in sub-sect. (2) of the repealed section, namely, of "all such other, if any, estates, interests, and charges as have been conveyed or created for securing money actually raised at the date of the deed," was strictly an exception from the words, "all estates, interests, and charges subsisting or to arise thereunder," and includes only such estates, interests, and charges conveyed or created for securing money actually raised, &c., as subsist or arise under the settlement, and does not extend to mortgages or charges created by beneficiaries on their respective beneficial interests. It is thought that the principle of these decisions will apply, *a fortiori*, to exception (ii) in sub-sect. (2) of the new section, namely, of all *legal* estates and charges by way of *legal* mortgage which have been conveyed or created for securing money actually raised, &c.; with the result, that the interests of purchasers or mortgagees of beneficial interests in remainder or reversion expectant on the particular interest to which are annexed the power of sale and other powers conferred by the

Treatise, p. 391 and n. (*z*). "Are subject to exercise of powers given by Settled Land Acts."

(*r*) L. P. Act, s. 1, and Part I. of First Schedule, above, pp. 97—99.
(*s*) L. P. Act, s. 137, above, Part III., Chapter IX., Section viii., pp. 190 *et seq.*
(*t*) See L. P. Act, s. 137 (2), above, *ib.*
(*u*) *Ib.*, sub-sect. (3). (*v*) Above, p. 326.

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Settled Land Act are liable to be overridden by the exercise of such powers and, in the case of a sale, to be shifted to the purchase-money or the property for the time being representing the same.

Compound settlement.

It appears, however, from a recent case that, where the disposition by the remainderman is a settlement of his beneficial interest, creating derivative beneficial interests in the settled land "by way of succession," the instrument by which the settlement is effected is one of the instruments which, for the purposes, at any rate, of the vesting deed required by the Second Schedule to the Settled Land Act (*w*), constitute the compound settlement the trustees of which must execute the vesting deed (*x*).

Mode of describing compound settlements.

In order to avoid any question as to the validity of a vesting deed, it is better, where there is a compound settlement, to describe *specifically* every instrument which is a constituent of the compound settlement. It is thought, however, that this is not always necessary. Take, for example, the case of a compound settlement subsisting at the commencement of the Settled Land Act and constituted, say, by (1) the will of a testator who died in 1885, under which, on the 1st January, 1908, A. is tenant for life with remainder to B., his eldest son, then of full age, in tail male; (2) a disentailing assurance executed on that date by which the settled land is limited to such cases as A. and B. shall by deed jointly appoint; and (3) a resettlement executed on the 2nd January, 1908, whereby, in exercise of the joint power, the settled land is resettled to the use of A. for life, in restoration of his life estate under the will, with remainder to the use of B. in fee simple. On the 1st January, 1926, C. and D., being the trustees for the purposes of the Settled Land Acts, 1882 to 1890, of the settlement made by the will, become the trustees of the compound settlement for the purposes of the Settled Land Act. Shortly afterwards, A. B. and C. concur in executing a vesting deed which

(*w*) S. L. Act, Second Schedule, para. 1 (1), (2), above, p. 290.

(*x*) *In re Cradock's Settled Estate*, (1926) Ch. 944. See also *In re Leigh's Settled Estates*, *ib.* 852, where it was held that land is not "subject to an immediate *binding* trust for sale" so long as the trust for sale is not capable of overriding all charges having under the settlement priority to the trust for sale. See now sect. 2 (2) of the L. P. Act, as amended by the L. P. Act, 1926, s. 7 and Sched., above, p. 551.

recites that A. is tenant for life under a compound settlement constituted by (1) the will, and (2) other instruments subsequent in date and operation to the will and being *or including* the indentures specified in the Schedule thereto. The Schedule specifies only the disentailing assurance and the resettlement. It is submitted that the words "or including" would avoid any question as to the sufficiency of the description of the compound settlement, even though it should subsequently be discovered that B. had, without the knowledge of A. or the trustees, married, say in 1925, and on his marriage executed a settlement of his estate in fee simple in remainder to the use of himself for life with remainders over in strict settlement.

Treatise, p. 392 and n. (*c*). "And to succession and estate duty."

No change has been effected by any of the Consolidation Acts as to the liability for succession and estate duty (*y*); but the Finance Act, 1925 (*z*), by which the scale of rates of estate duty was further increased, contains a provision similar to that mentioned in note (*c*) to this passage in regard to sales or mortgages of an interest in expectancy (*a*) made *bonâ fide* for full consideration in money or money's worth before the 28th April, 1925.

Treatise, p. 392. "Sales of reversionary interests at an undervalue."

The Sales of Reversions Act, 1867 (31 & 32 Vict. c. 4) is repealed (*b*) and replaced by sect. 174 of the Property Act, which section is set out and discussed hereafter in connection with Chapter XIV. of the Treatise (*c*).

Treatise, pp. 393-4 and nn. (*n*) and (*o*). "Exchange effected by mutual conveyances."

In note (*n*) to this passage thirty years must be substituted for forty years where the contract for exchange is made after the commencement of the Property Act (*d*). The stat. 7 & 8 Vict. c. 76 ("An Act to simplify the transfer of property"), mentioned in note (*o*), was repealed by the stat. 8 & 9 Vict. c. 106 (the Real Property Act, 1845), mentioned in the same note. Sect. 4 of the latter statute is repealed (*b*) and replaced by sect. 59 of the Property Act (*e*).

Treatise, p. 400. "Mines under copyholds."

All copyhold land is enfranchised (*f*), but the enfranchisement does not affect any right of the lord or tenant to any mines or

(*y*) See below, Section XXI. (*z*) 15 & 16 Geo. 5, c. 36, s. 22.
(*a*) Within the meaning of Part I. of the Finance Act, 1894.
(*b*) L. P. Act, s. 207 and Seventh Schedule.
(*c*) See below, Part IX., Section XIV.
(*d*) L. P. Act, s. 44 (1), (10), above, pp. 134, 135.
(*e*) Above, p. 224.
(*f*) L. P. Act, 1922, Part V., above, Part II., Chapter II.

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minerals or to work or carry away the same, or the rights, franchises, royalties, or privileges of the lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other sporting rights (*g*).

Treatise, pp. 410, 411.
Reservation of fishing and sporting rights to lessor.
L. P. Act, s. 65.

As we have seen (*h*), a reservation, made after the commencement of the Property Act, of a "legal estate" operates at law without any execution of the conveyance by the grantee of the "legal estate" out of which the reservation is made, or any regrant by him, so as to create the "legal estate" reserved, and so as to vest the same in possession in the person (whether being the grantor or not) for whose benefit the reservation is made. The right of fishing and sporting is "an easement, right, or privilege in or over land" and, if reserved "for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute," will be a "legal estate" (*i*) reserved out of a "legal estate," namely, the term of years absolute (*k*) granted by the lease. A "'conveyance" of freehold "land" (*l*) to any person without words of limitation, or any equivalent expression, if executed after the commencement of the Property Act, passes to the grantee the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance (*m*). It may be doubted whether this enactment applies to a reservation, especially where, as in the case of a lease, the estate of the grantee is not the fee simple. But, in any case, where the reservation is intended to be "in fee simple," this should be expressed.

Words of limitation.

Treatise, p. 411.
"Waste land of a manor."

Since the commencement of the Law of Property Act, 1922, there can be no tenants, whether freehold or copyhold, of a manor (*n*); but the enfranchisement of copyhold land effected by that Act will not deprive a "tenant" of any commonable right to which he was entitled in respect of the enfranchised land (*o*).

(*g*) L. P. Act, 1922, Twelfth Schedule, para. (5), above, p. 75. As to the rights preserved to the lord by this Schedule, see *ib.*, para. (7), above, p. 76, and L. P. Act, 1922, s. 138 (12), above, p. 81.
(*h*) L. P. Act, s. 65, above, p. 224.
(*i*) *Ib.*, s. 1 (2) (a), above, p. 98.
(*k*) Above, p. 101.
(*l*) See Table of Definitions, above, Part I., Chapter VII.
(*m*) L. P. Act, s. 61 (1), (4), above, p. 104.
(*n*) See L. P. Act, 1922, s. 128, above, pp. 62 *et seq.*
(*o*) *Ib.*, Twelfth Schedule, para. (4), above, p. 75.

Treatise, p. 413. "Party walls."

As we have seen (*p*), there can, since the commencement of the Property Act, be no tenancy in common in a party wall, but the same will be deemed to be severed vertically between the respective owners, and the owner of each part will have such rights to support and user over the rest of the structure as may be requisite for conferring rights corresponding to those which would have subsisted if there had been a tenancy in common.

Treatise, p. 414. "Undivided share in land."

Since the commencement of the Property and Settled Land Acts an undivided share in land is not "land" within the meaning of those Acts (*q*), and can only subsist or take effect "behind a trust for sale." It takes shape, therefore, as a right to a share in the net proceeds of sale of the entirety of the land and in the net rents and profits of such entirety until sale (*r*); and a contract, whether made before or after the commencement of the Property Act, to convey an undivided share in land will be satisfied by the conveyance of a corresponding share in the proceeds of sale of the land (*s*).

Title to be shown to a *money share*.

1. Where it represents an undivided share in land subsisting at the commencement of the L. P. Act.

Where an undivided share in land was subsisting at the commencement of the Property Act, the entirety of the land will on such commencement have vested in a trustee or trustees (including, in some cases, the Public Trustee) upon the "statutory trusts" (*t*), of which the primary trust is a trust for sale (*u*). This, being a trust for sale created by virtue of the Property Act, may be called a *statutory* trust for sale, as distinguished from a trust for sale created by a *disposition* (*v*). As from the time of such vesting and until the land is sold under the statutory trust for sale or such trust is otherwise put an end to (*w*), the original undivided share will be represented by what may for convenience be called a *money share*, that is, a right to receive a corresponding share in the net proceeds of

(*p*) Above, Part III., Chapter V., Section v., p. 162.
(*q*) See Table of Definitions, above, Part I., Chapter VII.
(*r*) See above, Part III., Chapter V.
(*s*) L. P. Act, s. 42 (6), above, p. 140.
(*t*) See above, Part III., Chapter V., Sections ii. and iv.
(*u*) Including power to postpone the sale at discretion: see L. P. Act, s. 25, above, p. 169. And see the definitions of "trust for sale," &c., above, Part I., Chapter VII.
(*v*) See above, Part III., Chapter VII.
(*w*) *E.g.*, by a partition under L. P. Act, s. 28 (3) (above, p. 171), or by a partition by agreement, if permissible (above, p. 158, n. (*v*)), or by reason of all the *money shares* falling into one ownership and the owner electing to take the land unconverted. (See L. P. Act, s. 31 (3), above, p. 167.)

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sale when the land is sold, and of the net rents and profits until sale; that is to say, it will be an equitable chose in action or, at most, an equitable interest in land. It is thought that a *money share*, owing to the possibility of its some day being reconverted into land (*w*), so far partakes of the nature of land that, in the absence of any stipulation to the contrary, a thirty years' title (*x*) should be shown, when it is contracted to be sold. If, since the commencement of the Property Act, there has been no dealing with the money share, at least thirty years before the date of the contract, which is a satisfactory root of title, the title to the entirety for such thirty years at least must be shown, and must, in any case, include the disposition which created the undivided share, and the vendor must show in whom the entirety vested by virtue of Part IV. of the First Schedule to the Property Act (*y*). The like title, *mutatis mutandis*, must be shown where the *money share* results from an attempt, after the commencement of the Property Act, to create an undivided share in land (*z*).

2. Where the *money share* results from an attempt, after 1925, to create an undivided share in land.

Inquiries of, and notice to, trustees for sale.

A purchaser or mortgagee of a *money share* should make the like inquiries of the trustees for sale before completion and give the like notice to such trustees on completion as on the purchase or mortgage of an equitable interest in land in remainder or reversion ought to be made of, and given to, the trustees of the settlement (*a*).

Treatise, p. 414. "Tenant in common buying other shares."

Possibly where an owner of one *money share* is buying another like share arising under a statutory trust for sale of the same land, he is entitled to production of the title to the share sold only since the execution of the instrument which, if executed before the commencement of the Property Act, created, or, if executed after such commencement, purported to create the undivided shares in the land, if such instrument was executed less than thirty years before the date of the contract, on the ground that the purchaser must be deemed to know the title which is common to both shares (*b*).

(*w*) See note (*w*) previous page.
(*x*) L. P. Act, s. 44 (1), above, p. 132.
(*y*) Above, Part III., Chapter V., Sections ii. and iv.
(*z*) See L. P. Act, s. 34, above, Part III., Chapter V., Section iii. For an example of an abstract of title to undivided shares, see L. P. Act, Sixth Schedule, Specimen No. 2.
(*a*) See above, p. 653.
(*b*) See the cases in nn. (*n*) and (*o*) on p. 414 of the Treatise.

Attention has already been drawn to the effect of sub-sect. (1) of sect. 78 of the Settled Land Act as altering the law laid down in *In re Walker*, (1908) 2 Ch. 705 (*c*), and to the amendment of that sub-section by the Law of Property (Amendment) Act, 1926 (*d*).

Treatise, pp. 414, 415. "Title under trust for conversion."

A mere power of sale of land at the discretion of trustees is, in effect, a trust either to retain or sell the land. It is now enacted (*e*) that, where a disposition or settlement coming into operation after the commencement of the Property Act contains a trust either to retain or sell land, the same shall be construed as a trust to sell the land with power to postpone the sale.

Conversion into realty.

Conversion into personalty.

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§ 6.—Sale of Purely Incorporeal Hereditaments.

Treatise, pp. 415 to 425.

The Provisions of the Property Act relating to freehold land apply to incorporeal hereditaments, subject only to the qualifications necessarily arising by reason of the inherent nature of the "hereditament" (*f*) affected (*g*).

Incorporeal hereditaments. L. P. Act, s. 201 (1).

"Thirty years" must now be substituted for "forty years" as the title to be shown under an open contract (*h*).

Treatise, p. 415, Length of title.

Sect. 45 of the Conveyancing Act, 1881, is repealed (*i*) and replaced by sect. 191 of the Property Act. The latter section extends the definition of "rent" to include cases which were expressly excluded by the repealed section (*k*), and the powers given to the "Minister" (*f*) by the new section are a considerable extension of those given to him as the successor of the Copyhold Commissioners by the repealed section. Thus the new section applies where there is a rent being either (a) a quit rent, chief rent or other annual or periodical sum issuing out of land; or (b) a rent reserved on a sale, or made payable under

Treatise, p. 416 and n. (*h*). "Perpetual rents, when redeemable." L. P. Act, s. 191. Changes in the law.

(*c*) Cited in nn. (*x*) and (*y*) on p. 415 of the Treatise. See above, pp. 298, 299.
(*d*) Above, p. 550.
(*e*) L. P. Act, s. 25 (4), above, p. 169.
(*f*) See Table of Definitions, above, Part I., Chapter VII.
(*g*) L. P. Act, s. 201 (1), above, p. 100.
(*h*) L. P. Act, s. 44 (1), above, p. 134.
(*i*) Above, p. 17.
(*k*) Namely, a rent reserved on a sale, a rent made payable under a grant or licence for building purposes, and any sum or payment issuing out of land not being perpetual: see C. Act, 1881, s. 45 (5).

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a grant or licence (not operating as an agreement for a lease or tenancy) for building purposes; or (c) a compensation rentcharge created as the consideration for the extinguishment of manorial incidents (*l*). Provision is made for the satisfaction of the redemption money by means of a Government annuity, where the rent is not perpetual (*m*), and as to the mode of ascertaining the amount of the redemption money where the rent is perpetual and was reserved on a sale, or was made payable under a grant or licence for building purposes (*n*). In certain cases the redemption money or the Government annuity may be paid into Court, and any person interested in the annuity or fund in Court may apply to the Court for directions in regard thereto (*o*). Rules (*p*) may be made by the Minister for regulating proceedings to be taken under this section, and as to the manner in which costs are to be borne by the respective parties (*q*). All decisions of the Minister made under this section will (subject only to such appeal to the Court as may be prescribed by rules of Court (*r*)) be final (*s*). The section applies whether or not the rent is settled or held on trust for sale, or on trust for charitable, ecclesiastical, public or other purposes, or is subject to incumbrances, and whether the rent was created before or after the commencement of the Act (*t*); but does not apply to tithe rentcharge or to a charge or other payment redeemable under the Tithe Acts, 1836 to 1918, or to a rent reserved by a lease or tenancy (*u*).

Treatise, p. 417. "Covenant to pay a rentcharge." Form of covenant. L. P. Act, s. 79.

After the commencement of the Administration Act, which abolishes descent to the "heir" (*x*), a covenant by a grantee on behalf of himself, his "heirs" and assigns will be inappropriate; and the words "on behalf of himself, his successors in

(*l*) L. P. Act, s. 191 (1). For compensation rentcharges, see above, Part II., Chapter III., p. 80.
(*m*) L. P. Act, s. 191 (1).
(*n*) *Ib.* (2).
(*o*) *Ib.* (4), (6).
(*p*) See the Redemption of Rents Rules, 1925, S. R. & O. 1925, No. 809, (1925) W. N., Part II., p. 367.
(*q*) L. P. Act, s. 191 (9).
(*r*) See the Rules of the Supreme Court (Law of Property and other Acts), 1925, S. R. & O. 1925, No. 935/L. 22, Order LIVD., (1925) W. N., Part II., p. 332.
(*s*) L. P. Act, s. 191 (10).
(*t*) *Ib.* (11).
(*u*) *Ib.* (12).
(*x*) A. E. Act, s. 45, above, Part VII., Chapter V., p. 449. The section applies only in the case of persons dying after the commencement of that Act.

title and the persons deriving title under him or them" (*y*) should be substituted. As we have seen (*z*), the latter words will, unless a contrary intention is expressed, be implied in a covenant, made after the commencement of the Property Act, "relating to any land of a covenantor or capable of being bound by him."

Treatise, p. 417. "Proviso for re-entry on non-payment of rent-charge."

Since the commencement of the Property Act, interests in land which under the Statute of Uses (*a*) or otherwise could before such commencement have been created as legal interests, may be created as equitable interests (*b*); and a right of entry exercisable on condition broken or for any other reason may be made exercisable by *any* person and the persons deriving title under him, but, if reserved for the benefit of an estate in fee simple (not being a rentcharge held for a legal estate), must be so limited that it must necessarily arise within the period authorised by the rule relating to perpetuities (*c*). This restriction confirms the modern doctrine referred to on this page of the Treatise.

Treatise, pp. 417, 418. Entry to satisfy arrears.

The provisions, referred to on these pages, of sect. 44 of the Conveyancing Act, 1881, and sect. 6 of the Conveyancing Act, 1911, are repealed (*d*) and re-enacted by sect. 121 of the Property Act, with some amendments to which attention has already been called (*e*).

Treatise, p. 418. "Release of part of land subject to a rentcharge."

Sect. 10 of the Law of Property (Amendment) Act, 1859 (22 & 23 Vict. c. 35), is repealed (*f*) and re-enacted by sect. 70 of the Property Act.

Treatise, p. 418. "Registration of a rentcharge when necessary."

The Land Charges Act, 1888, and sects. 12 and 14 of the Judgments Act, 1855 (18 & 19 Vict. c. 15), are repealed by the Land Charges Act (*g*). An annuity of the kind which by the repealed enactments was required to be registered is an "annuity" within the meaning of Part II. of the Land

(*y*) Or words to that effect.
(*z*) L. P. Act, s. 79, above, Part III., Chapter XV., p. 229.
(*a*) Repealed, L. P. Act, s. 207 and Seventh Schedule.
(*b*) L. P. Act, s. 4 (1), above, p. 195.
(*c*) *Ib.* (3), above, p. 196.
(*d*) Above, p. 17.
(*e*) Above, Part III., Chapter XII., p. 208.
(*f*) L. P. Act, s. 207 and Seventh Schedule.
(*g*) L. C. Act, s. 24 and Schedule.

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Greaves v. *Tofield.*

Charges Act (*h*). An "annuity" created after the commencement of that Act is not capable of registration (*i*). *Greaves* v. *Tofield* (*k*) appears to be overruled by sect. 5 (b) of the Land Charges Act which provides that an annuity which before the commencement of that Act was capable of being registered in the register of annuities shall be void as against a creditor or a purchaser of any interest in the land charged therewith, unless the annuity is for the time being registered in the register of annuities or in the register of land charges (*l*).

Treatise, p. 419. Rentcharges which are "land charges" within the L. C. Act, 1888.

As we have seen (*m*), a land charge as defined in the repealed Act of 1888 is a land charge of Class A as defined in the Land Charges Act (*n*). Sects. 12 and 13 of the repealed Act, relating to Land Charges as defined by that Act, are, with some modifications, re-enacted in relation to land charges of Class A by sects. 13 (1) and 14 (1) of the Land Charges Act (*o*).

Treatise, p. 420. Improvement of Land Acts.

The Improvement of Land Act, 1899, is amended by the Improvement of Land Act (1899) Amendment Act, 1925 (*p*), by the repeal of the proviso to sect. 1, sub-sect. (3), of the former Act, so far as it applies to Great Britain. References in the Act of 1899 to the remedies provided by the Conveyancing Act, 1881, in respect of rentcharges must now be construed as references to the remedies provided by sect. 121 of the Property Act (*q*).

Treatise, p. 420. "Lands sold as tithe free."

"Thirty years" must be substituted for "forty years" in this passage of the Treatise (*r*).

Treatise, p. 421. "Advowson." U. & C. E. Act, ss. 33 to 37.

Special provisions as to advowsons, &c., belonging to a "university" (*s*) or "college" (*s*), are contained in sects. 33 to 37 of the Universities and College Estates Act, 1925.

(*h*) Above, Part VI., Chapter III., pp. 396, 397.
(*i*) Above, p. 397.
(*k*) Treatise, p. 419 and n. (*z*).
(*l*) Namely, as a land charge of Class E. See above, p. 414.
(*m*) Above, Part VI., Chapter VI., p. 404.
(*n*) Class A expressly includes a charge created under sect. 20 or sect. 41 of the Agricultural Holdings Act, 1923, or "any previous similar enactment." See Treatise, p. 419, n. (*a*).
(*o*) Above, p. 405.
(*p*) 15 & 16 Geo. 5, c. 48.
(*q*) See Interpretation Act, 1889, s. 38, above, p. 11.
(*r*) L. P. Act, s. 44 (1), above, p. 134.
(*s*) See above, p. 8, n. (*n*).

Treatise, p. 422.

"Benefices Act, 1898." Amending "Measure" of 1923.

The Benefices Act, 1898 (*t*), is considerably amended by the Benefices Act, 1898 (Amendment) Measure, 1923 (*u*). Sect. 1 of the Measure enacts that a right of patronage of a benefice after two vacancies of such benefice subsequent to the passing (*x*) of the Measure have occurred shall become incapable of sale, and any transfer for valuable consideration of such right of patronage made after two such vacancies have occurred, whether such valuable consideration is mentioned in the transfer or not, shall be invalid: Provided that this section shall not apply to assignments of patronage under the New Parishes Acts or to sales of land to which rights of patronage are appendant. By sect. 2 a patron entitled in fee simple or fee tail in possession to a right of patronage of a benefice may by declaration under seal registered as therein mentioned declare his intention that the said right of patronage shall be thenceforth without power of sale, and as from the date of such registration sect. 1 of the Measure shall apply to the said right of patronage as if the two vacancies therein mentioned had occurred. By sect. 3, if a right of patronage of a benefice after the passing of the Measure becomes vested by transfer or otherwise in a person who at the date of its becoming so vested is, or subsequently becomes, a clergyman, or in his wife, or in some one on his or her behalf, he shall not be presented to the benefice, and any such presentation shall be void. Sect. 6 provides that a right of patronage of a benefice includes a right to nominate to the patron the person to be presented thereto.

Treatise, p. 423 and n. (*f*).

Reservation of a right of redemption.

By sect. 4 of the above-mentioned Measure the words "or in a mortgage the reservation of a right of redemption" in sect. 1, sub-sect. (7), of the Benefices Act, 1898, are repealed so far as a transfer of a right of patronage made after the

(*t*) See L. P. Act, s. 201, above, p. 100.

(*u*) 14 & 15 Geo. 5, No. 1. As to the powers conferred on "The National Assembly of the Church of England" to pass "measures" relating to that Church, see the Church of England Assembly (Powers) Act, 1919 (9 & 10 Geo. 5, c. 76). Sect. 7 of the Measure (No. 1 of 14 & 15 Geo. 5) provides that all enactments dealing with rights of patronage of benefices, whether contained in public or private Acts of Parliament, shall continue to have effect only so far as they are not inconsistent with the provisions of the Measure. Sect. 5 repeals the Clergy Resignation Bonds Act, 1828, and amends the Form of Declaration in the Schedule to the Benefices Act, 1898. The Benefices Rules, 1898, referred to in n. (*d*) on p. 422 of the Treatise, are rescinded and replaced by the Benefices Rules, 1926, S. R. & O. 1896, No. 357/L. 7.

(*x*) The Measure received the Royal Assent on the 14th July, 1924.

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passing of the Measure is concerned. The effect of this repeal appears to be to invalidate any mortgage, so made, of a right of patronage; but this is not clear and, if such were the intention, one would have expected to find it so expressed.

Treatise, pp. 425 to 443.

§ 7.—Sale of Charity Lands.

Changes in the law.

S. L. Act, s. 29.

Sect. 29 of the Settled Land Act effects important changes in the law as to (1) the powers of disposition of trustees for charitable purposes, and (2) the requisites of a valid assurance of land to charitable uses.

The section is as follows:—

Charitable and public trusts.

29.—(1) For the purposes of this section, all land vested or to be vested in trustees on or for charitable, ecclesiastical, or public trusts or purposes shall be deemed to be settled land, and the trustees shall, without constituting them statutory owners, have in reference to the land, all the powers which are by this Act conferred on a tenant for life and on the trustees of a settlement.

In connexion only with the exercise of those powers, and not so as to impose any obligation in respect of or to affect—

(a) the mode of creation or the administration of such trusts; or

(b) the appointment or number of trustees of such trusts;

the statute or other instrument creating the trust or under which it is administered shall be deemed the settlement, and the trustees shall be deemed the trustees of the settlement, and, save where the trust is created by a will coming into operation after the commencement of this Act, a separate instrument shall not be necessary for giving effect to the settlement.

Any conveyance of land held on charitable, ecclesiastical or public trusts shall state that the land is held on such trusts, and where a purchaser has notice that the land is held on charitable, ecclesiastical, or public trusts, he shall be bound to see that any consents or orders requisite for authorising the transaction have been obtained.

(2) The said powers shall be exercisable subject to such consents or orders, if any, being obtained as would, if this Act had not been passed, have been requisite if the transaction were being effected under an express power conferred by the instrument creating the trust, and where the land is vested in the official trustee of charity lands or in any other persons having no powers of management, the said powers shall be exercisable by the managing trustees or committee of management, and the official trustee or other persons aforesaid shall not be liable for giving effect to directions given by the managing trustees or committee of management:

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Provided that where—

(a) a disposition or dealing is to be effected for a nominal price or rent, or for less than the best price or rent that can be reasonably obtained or gratuitously; or

(b) any interest in land is to be acquired;

the like consent or order (if any) shall be required in reference to the disposition, dealing or acquisition, as would have been requisite if the intended transaction were a sale.

(3) Nothing in this section affects the jurisdiction of the court, Charity Commissioners, Board of Education, or other competent authority, in regard to the administration of charitable, ecclesiastical, or public trusts.

(4) Every assurance of land or of personal estate, within the meaning of section four of the Mortmain and Charitable Uses Act, 1888, or if the charitable uses are declared by a separate instrument, then that instrument, shall, in place of the requirements respecting attestation and enrolment prescribed by subsections (6) and (9) of that section, be sent to the offices of the Charity Commissioners within six months after the execution thereof or within such extended period as the said Commissioners may, either before or after the expiration of the six months, in any particular case allow, for the purpose of being recorded in the books of the said Commissioners. 51 & 52 Vict. c. 42.

Where the original cannot be produced, an attested or office copy may be sent instead of the original.

This subsection does not apply to registered dispositions of registered land, or to assurances or instruments required by section one hundred and seventeen of the Education Act, 1921, to be sent to the Board of Education, and only applies to instruments executed after the commencement of this Act. 11 & 12 Geo. 5, c. 51.

(5) Where any trustees or the majority of any set of trustees have power to transfer or create any legal estate, that estate shall be transferred or created by them in the names and on behalf of the persons (including the official trustee of charity lands) in whom the legal estate is vested.

(6) This section applies (save as otherwise provided) whether the trust was created before or after the commencement of this Act, but does not apply to land to which the Universities and College Estates Act, 1925, applies. 15 Geo. 5, c. 24.

Effect of s. 29, subs. (1). "Trustees."

It is thought that a corporation in whom land is vested or to be vested on or for charitable, ecclesiastical, or public trusts or purposes will be a "trustee" within the meaning of this section.

"Separate instrument."

No directions are given as to the form or contents of the separate instrument which, where the trust is created by a will coming into operation after the commencement of the Act, and in that case alone, is necessary to give effect to the settle-

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ment. It seems that what is required is an assent or conveyance (*y*) by the personal representatives in whom the land devised or bequeathed vested on the death of the testator (*z*). The assent or conveyance should, no doubt, specify the trusts on which the land is to be held, either expressly or by reference to the will (*a*).

Subs. (4). Assurances. Treatise, p. 426. "Requisites of the conveyance of land to charitable uses."

Sub-sects. (6) and (9) of sect. 4 of the Mortmain and Charitable Uses Act, 1888, are repealed so far as those sub-sections relate to assurances executed after the commencement of the Settled Land Act (*b*). The effect of this repeal and of sub-sect. (4) of sect. 29 of that Act is that requirements numbered (2) and (4) on this page of the Treatise do not apply to assurances so executed, and that in lieu thereof the assurance (or the separate instrument or the attested or office copy, as the case may be) must be sent to the offices of the Charity Commissioners within six months after the execution of the assurance or separate instrument, or within such extended period as may be allowed as mentioned in sub-sect. (4), for the purpose of being recorded in the books of the said Commissioners.

Registered land.

Where the assurance is of registered land and is effected after the commencement of the Settled Land Act by a registered disposition of such land, it need not be recorded with the Charity Commissioners; but the special form of "Transfer of Land for Charitable Uses" (*c*) will be used, and the Rules for securing that land held for charitable uses shall not be dealt with without the necessary consents (*d*) will apply.

Educational purposes.

Sub-sect. (4) of sect. 29 does not apply to assurances or instruments required by sect. 117 of the Education Act, 1921 (*e*), to be sent to the Board of Education. Sect. 117 of that Act is as follows:—

Exemption of assurance of property for

117.—(1) Any assurance, as defined by section ten of the Mortmain and Charitable Uses Act, 1888, of land or personal estate to be laid

(*y*) See A. E. Act, s. 36, above, Section VII., p. 588.
(*z*) See *ib.*, ss. 1, 3, above, pp. 432, 434.
(*a*) Compare the form of "Assent by Personal Representatives in favour of Trustees for sale," L. P. Act, Fifth Schedule, Form No. 9. See also the form of "Transfer of Land for Charitable Uses," L. R. Rules, 122, and Form 36.
(*b*) S. L. Act, s. 119 and Fifth Schedule.
(*c*) L. R. Rules, 122, and Form 36. (*d*) *Ib.*, 60 to 62.
(*e*) 11 & 12 Geo. 5, c. 51, being "An Act to consolidate the enactments relating to Education and certain enactments relating to the Employment of Children and Young Persons."

out in the purchase of land for educational purposes, whether made before or after the passing of this Act, shall be exempt from any restrictions of the law relating to mortmain and charitable uses, and the Mortmain and Charitable Uses Acts, 1888 and 1891, and the Mortmain and Charitable Uses Act Amendment Act, 1892, shall not apply with respect to any such assurance.

educational purposes from restrictions under the Mortmain Acts.

(2) Every assurance of land or personal estate to be laid out in the purchase of land for educational purposes, including every assurance of land to any local authority for any educational purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land, shall be sent to the offices of the Board of Education in London for the purpose of being recorded in the books of the Board as soon as may be after the execution of the deed or other instrument of assurance, or in the case of a will after the death of the testator.

Record.

It will be seen that sect. 29 of the Settled Land Act does not apply to land to which the Universities and College Estates Act, 1925, applies. Land to which that Act applies is defined as follows by sect. 41 of the Act:—

Subs. (6). U. & C. E. Act.

41.—(1) The powers and provisions of this Act relating to land belonging to a university or college shall extend and be applicable not only to land vested in the university or college, or in any body constituted for holding land belonging to the university or college, and held as the property or for the general purposes of the university or college, but also to land so vested which may be held upon any trusts, or for any special endowment or other purposes, connected with the university or college.

Land to which Act applies and mode of exercise of powers.

(2) The powers conferred by this Act on a university or college may as respects each particular university or college be exercised by such body and in such manner as may be provided by the statutes regulating that university or college.

The Act is concerned almost entirely with conferring on a university or college to which the Act applies (*f*) powers similar to and, to a large extent, identical with, those conferred on a tenant for life by the Settled Land Act. These powers are conferred directly, not referentially, and the language used in conferring them follows closely and, in most cases, identically that used in the Settled Land Act in conferring powers on a tenant for life. The main differences are that a university or college cannot make a sale or exchange except with the consent of the Minister (*g*); that it may lease for any term

(*f*) U. and C. E. Act, s. 1, above, p. 8 and n. (*n*).
(*g*) U. and C. E. Act, s. 2 (2).

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not exceeding, in the case of a building lease, 99 years; in the case of a mining lease, 60 years; and, in the case of any other lease, 21 years; and has no express power to grant forestry leases (*h*); that mineral rents are applicable by the university or college as to one-third as income and as to the remaining two-thirds for specified capital purposes (*i*); that all capital money arising from a transaction must be paid to the Minister (*k*); and that the Minister takes the place of (1) the Court in matters over which the latter has jurisdiction under the Settled Land Act (*l*); and (2) the trustees of the settlement in cases where the consent of the latter is required under the last-mentioned Act (*m*).

Treatise, p. 427 and n. (*d*).

Copyhold land (*n*).

Since the enfranchisement of copyhold land by the Law of Property Act, 1922 (*o*), there can, of course, be no assurance for charitable uses of land of copyhold or customary tenure; but any such assurance of "enfranchised land," in addition to complying with the requirements of the Mortmain and Charitable Uses Act, 1888, as amended by the Settled Land Act, must, so long as the "manorial incidents" (if any) remain unextinguished, be produced to the steward of the manor for endorsement by him as required by the statutory enactment in that behalf (*p*).

Treatise, pp. 427, 428 and nn. (*f*) and (*g*).

"Assurance by registered disposition under the Land Transfer Acts."

"Enrolment of separate deed of trust."

Sects. 5 and 9, and, as we have seen (*q*), sub-sects. (6) (*r*) and (9) of sect. 4 of the Mortmain and Charitable Uses Act, 1888, are repealed so far as they relate to assurances executed after the commencement of the Settled Land Act (*s*). The only power now available to remedy any defect arising from non-compliance with the requirements of the Act of 1888, as amended, is that, where an assurance has to be sent to the offices of the

(*h*) U. and C. E. Act, s. 6.
(*i*) *Ib.*, s. 12.
(*k*) *Ib.*, ss. 5, 7 (4), 13 (7), 14 (4), 15 (2), 16 (4), 20 (1), 23 (5).
(*l*) See, *e.g.*, sect. 21.
(*m*) See, *e.g.*, sect. 17 (1), (2).
(*n*) As to the repeal of sub-sect. (6) of sect. 4 of the Mortmain and Charitable Uses Act, 1888, see above, p. 666.
(*o*) Above, Part II., Chapter II.
(*p*) L. P. Act, 1922, s. 129, above, p. 63.
(*q*) Above, p. 666.
(*r*) The reference in n. (*g*) on p. 428 of the Treatise to sect. 4 (6) should have been to sect. 4 (9).
(*s*) S. L. Act, s. 119 and Fifth Schedule. As to registered land, see above, p. 666.

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Charity Commissioners within six months after the execution thereof, the said Commissioners may extend the time for doing so, in any particular case (*t*), either before or after the expiration of the six months (*u*).

"Power to enrol instruments not enrolled within due time."

Treatise, p. 441.

As we have seen, it is now enacted that, where any trustees, or the majority of any set of trustees, have power to create or transfer any legal estate, that estate shall be transferred or created by them in the names and on behalf of the persons (including the official trustee of charity lands) in whom the legal estate is vested (*x*). As this enactment affects only the *form* of the assurance, it does not *otherwise* affect this passage of the Treatise.

"Assurance of the legal estate in charity lands."

§ 8.—Partnership Property.

Treatise, pp. 443 to 447.

Partnership land.

Effect of Property Act.

As land held by or in trust for partners as part of their partnership estate belongs in equity to the partners in accordance with their respective shares and interests in the partnership property, or, in other words, in undivided shares, it is thought that the entirety of land so held immediately before the commencement of the Property Act will, upon such commencement, have vested in a trustee or trustees upon the "statutory trusts" (for sale, &c.) in accordance with the provisions of paragraph 1 of Part IV. of the First Schedule to the Property Act (*y*); and that land conveyed to, or for the benefit of, partners since such commencement, whatever the form of the conveyance, unless it were expressly conveyed upon trust for sale (*z*), must necessarily vest in a trustee or trustees upon the "statutory trusts" (*a*). The result appears to be that, since the commencement of the Property Act, land belonging to partners must always be subject, if not to an express, then to an implied trust for sale (*b*).

Semble, partnership land always subject to an express or implied trust for sale.

(*t*) It is thought that some special case for such extension will have to be made out.

(*u*) S. L. Act, s. 29 (4), above, p. 665.

(*x*) *Ib.* (5).

(*y*) Above, Part III., Chapter V., Section ii., as amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 557.

(*z*) Above, Part III., Chapter VII.

(*a*) See L. P. Act, s. 34, above, Part III., Chapter V., Section iii.

(*b*) As, in effect, it was before such commencement. See n. (*x*) on p. 444 of the Treatise.

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Treatise, p. 444 and n. (z). Devolution of trust estate.

Sect. 30 of the Conveyancing Act, 1881, is repealed, so far as it relates to deaths occurring after the commencement of the Property Act (*c*), and, in the case of deaths so occurring, the devolution of trust estates is governed by Part I. of the Administration Act (*d*).

Treatise, pp. 445, 446. "Persons to concur in disposition."

If the true view be that all partnership land is held upon trust for sale, it seems to follow (1) that the partners or persons in whom the legal estate is for the time being vested will have all the powers conferred upon trustees for sale by sect. 28 (1) of the Property Act (*e*); and (2) that a purchaser from such partners or persons, who has notice that the land is partnership property, may nevertheless rely upon the protection afforded to purchasers by sect. 27 (1) of the same Act (*e*). The trustees for sale will be the only persons able to convey or create a legal estate in the partnership land for the purpose of giving effect to a sale, lease or mortgage, and in most cases, it is thought, the only proper persons to enter into contracts affecting the land. Where the trust for sale is created by a "disposition," the powers of the trustees must be exercised with such consents (if any) as would have been required on a sale under the trust for sale (*f*), but, if the consent of more than two persons is required, then, in favour of a purchaser, the consent of any two of them will be sufficient (*g*). Moreover, a sole trustee will be unable to give an effectual receipt for any capital money arising under a transaction (*h*).

Treatise, pp. 446, 447. Powers of individual or surviving partner.

These changes in the law will not, it is thought, affect any power which an individual partner, during the subsistence of the partnership, or a surviving partner, after its dissolution, has, or, apart from these changes, would have had, to bind the partnership land in equity by contract or otherwise.

(*c*) Above, p. 17.
(*d*) Above, Part VII., Chapter II.
(*e*) Above, Part III., Chapter VII., p. 170.
(*f*) L. P. Act, s. 28 (1), above, p. 171.
(*g*) *Ib.*, s. 26 (1), above, p. 169.
(*h*) See the new sub-sect. (2) to sect. 27 of the L. P. Act: L. P. Act, 1926, s. 7 and Schedule, above, p. 553.

§ 9.—Sale by Order of the Court.

Sect. 70 (*i*) of the Conveyancing Act, 1881, is re-enacted, substantially (*k*), by sect. 204 of the Property Act.

Treatise, pp. 448 to 452.

The position in regard to the enactments referred to in note (*o*) to this passage of the Treatise is as follows:—The Administration of Estates Act, 1833 (3 & 4 Will. 4, c. 104), is, as regards deaths occurring after the commencement of the Administration Act, repealed (*l*) and, together with other enactments (*m*), replaced by sect. 32 of the latter Act. Sect. 25 (*n*) of the Conveyancing Act, 1881, is replaced, with amendments, by sect. 91 of the Property Act (*o*). The Partition Acts, 1868 and 1876, are repealed without prejudice to proceedings commenced thereunder before the commencement of the Property Act (*p*). The Settled Estates, 1877, is repealed (*q*). Sect. 13 of the Judgments Act, 1838 (1 & 2 Vict. c. 110), is repealed (*r*) and replaced by sect. 195 (1) (2) of the Property Act.

Treatise, p. 448 and n. (*n*), p. 451 and n. (*k*).

"Title under an order for sale made by the Court."

Treatise, p. 448 and n. (*o*).

"Jurisdiction of the Court to order a sale of land."

The Supreme Court of Judicature Act, 1873 (36 & 37 Vict. c. 66), except sects. 25 (2), 46, 64 and 66, and the Supreme Court of Judicature Act, 1875 (38 & 39 Vict. c. 77), are repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*s*), sects. 18 and 56 of which Act deal respectively with the "General jurisdiction of High Court" and "Assignment of business to Divisions."

Treatise, pp. 448, 449 and n. (*p*).

The High Court.

In regard to deaths occurring after the commencement of the Administration Act, the Debts Recovery Act, 1830 (11

Treatise, p. 450 and nn. (*u*), (*y*), (*a*).

(*i*) Repealed, above, p. 17.
(*k*) See above, p. 251.
(*l*) A. E. Act, s. 56, and Part I. of Second Schedule.
(*m*) See Table I., above, p. 425.
(*n*) Repealed, above, p. 17.
(*o*) Above, p. 129.
(*p*) L. P. Act, s. 207 and Seventh Schedule. See L. P. Act, First Schedule, Part IV., para. 1 (11), above, p. 158, as amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 557.
(*q*) S. L. Act, s. 119 and Fifth Schedule.
(*r*) L. P. Act, s. 207 and Seventh Schedule.
(*s*) 15 & 16 Geo. 5, c. 49, s. 226 and Sixth Schedule. Sect. 25 (2) of the Act of 1873 is the enactment which provides that no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations. Sects. 46, 64 and 66 of the same Act are repealable by Rules of Court: see 15 & 16 Geo. 5, c. 49, s. 99 and First Schedule.

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Geo. 4 & 1 Will. 4, c. 47), is repealed (*t*), sect. 11 of the repealed Act, with other enactments, being replaced by sect. 38 of the Administration Act (*u*). The Trustee Act, 1893, is repealed by the Trustee Act (*x*), which re-enacts, with or without amendment, several of the sections of the repealed Act, including most of those mentioned in note (*a*) on this page of the Treatise (*y*).

Treatise, pp. 452 to 464.

§ 10.—Sale of an Equity of Redemption.

Since 1925 there can be no "equity of redemption" as an equitable estate resulting from the creation of a legal mortgage.

Since the commencement of the Property Act there can be no "equity of redemption" in the sense in which that expression (*z*) is used in this section of Chapter X. of the Treatise, namely, as denoting the "equitable estate" by virtue of which, after the legal estate had been divested in favour of a mortgagee, the mortgagor, until foreclosure, was regarded in equity as the real owner of the land (*a*). For, as we have seen (*b*), no *legal mortgage* of a *legal estate* can, if created after the commencement of the Property Act, take effect, in the case of freehold land, otherwise than as a term of years absolute (*c*), or, in in the case of leasehold land, otherwise than as a sub-term (*c*) for a term of years absolute less by one day at least than the term vested in the mortgagor; with the result, in either case, that the legal estate of the mortgagor remains vested in him and is *not* converted into an equitable estate.

Changes in the law.

1. Mortgages created after 1925.

L. P. Act, ss. 85, 86.

2. Mortgages existing immediately before 1926.

L. P. Act, 1st Sched., Parts VII. and VIII.

A like change in the case of mortgages existing immediately before the commencement of the Property Act was effected by the provisions of Parts VII. and VIII. of the First Schedule to that Act (*d*). These provisions applied only to a mortgage

(*t*) A. E. Act, s. 56 and Part I. of Second Schedule.
(*u*) See Table I., above, p. 425.
(*x*) Above, Part V., Chapter I., p. 352.
(*y*) See the Table, above, pp. 354, 355. As to vesting orders in regard to land, see above, Part V., Chapter VI., Section ii.
(*z*) In the Consolidation Acts the expression used is "right of redemption," that is, the equitable right to redeem which is an inseparable attribute of a mortgage: see *Noakes & Co., Ltd.* v. *Rice*, (1902) A. C. at p. 30, per Lord Macnaghten.
(*a*) See *Casborne* v. *Scarfe*, 1 Atk. 603; *Heath* v. *Pugh*, 6 Q. B. D. at p. 360, per Lord Selborne, L.C.
(*b*) L. P. Act, ss. 85, 86, above, Part III., Chapter III., Section iii.
(*c*) Or its equivalent, a charge by way of legal mortgage: *ib.*, Section iv.
(*d*) Above, Part III., Chapter III., Section ii.

What mortgages, so existing, were affected.

so existing which was for an estate, whether legal or equitable, capable of subsisting as a "legal estate" (*e*); that is, in the case of freehold land, for an estate in fee simple in possession, and, in the case of leasehold land, by *assignment* of the term of the lease. They did not apply, therefore, (i) to equitable charges, conferring no estate on the chargee; nor (ii) to mortgages conferring on the mortgagee an estate, whether legal or equitable, capable of subsisting only as an "equitable interest" (*f*), *e.g.*, an estate in fee simple in remainder expectant on a particular estate of freehold subsisting at the commencement of the Property Act.

Effect on mortgages, so existing, which were affected.

The effect on any mortgage to which these provisions applied was that, whether legal or equitable, it became a legal mortgage for a term of years absolute and, in the case of leasehold land, for a term less by one day at least than the term assigned by the mortgage; and that the legal estate affected vested in the person of full age who, if all incumbrances had been discharged at the commencement of the Act, would have been entitled to a reconveyance (*g*).

Effect where the mortgage was "equitable."

Where a mortgage to which these provisions applied was equitable it would, but for its conversion into a legal mortgage, have taken effect, after the commencement of the Property Act, as an "equitable interest." It is accordingly provided that a mortgage affecting a legal estate made before the commencement of the Property Act which is not protected, either by a deposit of documents of title relating to the legal estate or by registration as a land charge, shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage, but shall, in favour of such purchaser, be deemed to remain an equitable interest (*h*).

(*e*) L. P. Act, s. 1, above, Part III., Chapter I., p. 97.

(*f*) L. P. Act, s. 1, *ubi sup.* Equitable charges are equally unaffected by sects. 85 and 86 of the L. P. Act. Dealings with "equitable interests," effected since the commencement of the L. P. Act, are placed on the same footing as dealings with equitable things in action: see L. P. Act, s. 137, above, Part III., Chapter IX., Section viii.

(*g*) See n. (*d*), above.

(*h*) L. P. Act, First Schedule, Part VII., para. 6; Part VIII., para. 5. These paragraphs do not apply to mortgages or charges registered or protected under the L. R. Act, or to mortgages or charges registered in a local deeds registry: see *ib.*

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Possession of title deeds.

"Puisne mortgages."

The possession by a mortgagee of the title deeds (*i*) relating to the legal estate affected is the one factor which exempts his mortgage from the necessity of being protected by registration as a land charge. A legal mortgage, not being a mortgage protected by a deposit of documents relating to the legal estate affected, and (where the whole of the land affected is within the jurisdiction of a local deeds registry) not being registered in the local deeds registry, is a "puisne mortgage," and, as such, registrable as a land charge (*k*).

Application of s. 10 of Chap. X. of the Treatise.

In view of the above-mentioned changes in the law, sect. 10 of Chapter X. of the Treatise, so far as it relates to the effect of the purchase of an "equity of redemption," can still apply only where the inquiry is into a title which, or a link in the chain of which, depends upon the effect of such a purchase effected before the commencement of the Property Act.

Other changes in the law.

Treatise, p. 452.

"Equitable estates in land."

Priority of dealings with "equitable interests."

There are other changes in the law as stated in the course of this section of Chapter X. Thus, the priority of charges on or other dealings with "equitable estates" (*l*), now classified as "equitable interests" (*m*), in land, effected after the commencement of the Property Act, is governed, not by the order of the times at which they were effected, but by the provisions of sect. 137 of that Act, which section extends to such dealings the law regulating the priority of dealings with "equitable things in action," that is, in effect and with some modifications, the rule in *Dearle* v. *Hall* (*n*).

Inquiries on purchase of an "equitable interest."

The purchaser, therefore, of an equitable interest, in addition to requiring a proper abstract of title to be furnished and

(*i*) As to what title deeds must be deposited in order to constitute an effectual equitable mortgage by deposit of title deeds, see Coote on Mortgages, 7th ed., Vol. I., pp. 71 *et seq.* As to the saving of the effect of possession of title deeds, see L. P. Act, s. 13, above, p. 220.

(*k*) L. C. Act, s. 10 (1), Class C (i), above, pp. 407 *et seq.*

(*l*) The nearest approach to an "equitable estate," in the old sense, appears to be an equitable interest "capable of subsisting as a legal estate," at any rate where the owner of such an interest has become entitled to call for the legal estate. See, *e.g.*, S. L. Act, s. 7 (5), above, p. 284. As to the vesting of such an interest, if subsisting immediately after the commencement of the L. P. Act, see L. P. Act, First Schedule, Part II., para. 4, above, p. 108; and as to a contract for the sale of such an interest, see L. P. Act, s. 42 (4) (ii), above, p. 140.

(*m*) See L. P. Act, s. 1, above, p. 97.

(*n*) Above, Part III., Chapter IX., Section viii.

verified, should (1) inquire of the trustees of the settlement, trustees for sale or estate owner on whom, according to the nature of the interest, notices of dealings ought to be served (*o*), what notices, if any, have been served; (2) inspect the appropriate "instrument" to see whether a memorandum of a dealing has been indorsed or written thereon or annexed thereto (*p*); and (3) on the completion of the purchase, if, as the result of such inquiries and inspection, and of the investigation of the title, it proceeds to completion, give the appropriate notice *in writing* (*q*) of the dealing so completed, or, where for any reason "a valid notice cannot be served, or cannot be served without unreasonable cost or delay," require a memorandum of the dealing to be indorsed, written on or permanently annexed to, the appropriate instrument (*r*).

Purchaser how far protected.

A purchaser who protects the dealing with himself by a proper notice or memorandum will ensure priority over any prior dealing which ought to have been, but was not, so protected, unless at the time of the completion of his purchase he had notice *aliunde* of the existence of any such prior dealing (*s*). But any priority acquired before the commencement of the Property Act will be unaffected (*t*). Where, therefore, the equitable interest was in existence before the commencement of the Property Act, either in the form of an equitable estate or interest or in the form of a legal estate which was subsequently converted into an equitable interest by virtue of Part I. of the First Schedule to the Property Act (*u*), the purchaser should inquire of the vendor whether he has effected or is aware of any dealing with the equitable interest prior to the commencement of the Property Act which is not disclosed in the abstract (*v*).

Tacking.

There are several references (*w*) in this section of this Chapter of the Treatise to the doctrine of tacking. Save in regard to the making of further advances as provided by

(*o*) See L. P. Act, s. 137 (2), above, p. 191.
(*p*) *Ib.* (4), (5) and (6). (*q*) *Ib.* (3).
(*r*) *Ib.* (4), (5) and (6).
(*s*) This appears to be the law: see above, p. 193.
(*t*) L. P. Act, s. 137 (7), above, p. 192.
(*u*) Above, p. 99.
(*v*) See Treatise, p. 455, "Inquiries to be made of the Vendor."
(*w*) See Treatise, pp. 453, 454, 455, 457, 461.

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sect. 94 (*x*) of the Property Act, the right to tack is abolished, but without effecting any priority acquired before the commencement of that Act by tacking, or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer (*y*).

Treatise, pp. 458 to 461. "Marshalling securities."

The rules as to marshalling securities, as stated on these pages of the Treatise, appear to be unaffected by any changes in the law, except the abolition of the right to tack (*z*).

Treatise, pp. 467 to 475.

§ 12.—Land subject to Restrictive Covenants (*a*).

Relevant enactments. L. P. Act, ss. 78 to 80, 84.

The only new enactments relevant to this section of Chapter X. of the Treatise appear to be sects. 78 and 79 of the Property Act, which contain provisions as to covenants "relating to land" entered into after the commencement of that Act (*b*); sect. 80 of that Act as to covenants binding land (*c*); and sect. 84 of that Act giving power in certain cases to discharge or modify restrictive covenants affecting lands (*d*).

Annexing benefit of restrictive covenant to particular land.

It should be borne in mind that the benefit of a covenant relating to land entered into after the commencement of the Property Act may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the benefit could have been made to run with the land before the commencement of the Act (*e*).

(*x*) Above, p. 127, as amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 555.

(*y*) L. P. Act, s. 94 (3), above, p. 128.

(*z*) The passage, therefore, in regard to "Tacking" on p. 461 of the Treatise is no longer law.

(*a*) As to the registration of restrictive covenants, see L. C. Act, s. 10 (1), Class D (ii), above, p. 412, and L. P. Act, 1926, s. 4, above, p. 544.

(*b*) Above, Part III., Chapter XV., Section iii. (c), pp. 227 *et seq.*

(*c*) *Ib.*, p. 230.

(*d*) *Ib.*, p. 231. For a case where, in an action to enforce restrictive covenants, leave of the Court was given to apply to the "authority," see *Feilden* v. *Byrne*, (1926) W. N. 118.

(*e*) L. P. Act, s. 80 (3), above, p. 230. Notwithstanding this enactment, the practice of defining the land intended to be benefited should, it is thought, be adhered to.

SECTION XI.

EFFECT OF THE CONTRACT PENDING COMPLETION.

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§ 1.—Of the Rights and Liabilities of the Parties pending Completion in respect of the Property Sold.

Treatise, Chap. XI., § 1, pp. 480 to 502.

i. *Repeals and Re-enactments.*

Sect. 23 (3) (*a*) of the Conveyancing Act, 1881, is repealed (*b*) and replaced by the following sub-section of sect. 108 of the Property Act:—

(3) [All money received on an insurance] of mortgaged property against loss or damage by fire or otherwise [effected under this Act,] or any enactment replaced by this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, [shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.]

Insurance of mortgaged property. [C. Act, 1881, s. 23 (3).]

Sect. 7 (*c*) of the Conveyancing Act, 1881, is repealed (*b*) and replaced by sect. 76 of the Property Act (*d*).

Implied covenants for title.

ii. *Substantive Amendments.*

In the case of a purchaser who dies intestate after the commencement of the Administration Act, real estate, including chattels real, which belonged to him in equity by virtue of his contract for purchase, will devolve upon his personal representative upon trust for sale; and such real estate or the proceeds thereof, so far as not required for purposes of administration, will form part of his "residuary estate" and be applicable accordingly (*e*).

Treatise, p. 482. "Real estate descendible to his heir."

(*a*) Cited Treatise, p. 487, n. (*q*).
(*b*) Above, Part I., p. 17.
(*c*) Cited Treatise, p. 497, n. (*q*).
(*d*) See below, Section XIX.
(*e*) See A. E. Act, ss. 1, 3, 33, 46 and 47, above, Part VII., pp. 432, 434, 441, 450 *et seq.* The above observations will apply to the references to the "heir" or "heirs" in § 2 of Chapter XI. of the Treatise.

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Treatise, p. 483. "Destruction by fire pending completion of a house insured by the vendor."

This passage must be read in connection with sect. 47 of the Property Act (*f*), which section applies, subject as therein mentioned, to any contract for sale or exchange made after the commencement of that Act.

Treatise, pp. 496 to 498. "The vendor's duty to discharge the outgoings."

Local land charges. L. C. Act, s. 15.

All charges acquired by any local authority under any of the statutes mentioned on page 497 of the Treatise or under any similar statute (public, general, or local or private) passed at or after the commencement of the Land Charges Act, which take effect by virtue of the statute, are "local land charges" within the meaning of Part VI. (sect. 15) of the Land Charges Act (*g*), and must be registered in the prescribed (*h*) manner by the proper officer of the local authority, and will be void as against a purchaser for money or money's worth of a legal estate in the land affected thereby unless registered in the appropriate register before the completion of the purchase (*i*). But this section does not impose any obligation to register any local land charge created or arising before the commencement of the Land Charges Act except after the expiration of one year from such commencement or to discharge a purchaser from liability in respect of any local land charge which is not for the time being required to be registered (*k*). Registration of a local land charge will constitute actual notice of the charge (*l*).

Notice.

Treatise, p. 498 and n. (*s*). Sums recoverable by local authority from owner for the time being.

The new paragraph (*m*) which is to be inserted at the end of sub-sect. (1) of sect. 15 of the Land Charges Act, provides that *for the purposes of that section* any sum which is recoverable by a local authority under any of "the Acts aforesaid" (that is, presumably, any such statute as is referred to in that sub-section) from successive owners or occupiers of the property in respect of which the sum is recoverable shall, whether such sum is expressed to be a charge on the property or not, be deemed to be a charge. This amendment probably has the effect of overruling the decision in *Egg* v. *Blayney*, 21 Q. B. D. 107.

(*f*) Above, Part III., Chapter IV., p. 148.
(*g*) Above, Part VI., Chapter VII.
(*h*) See Local Land Charges Rules, 1926, above, p. 419, n. (*f*).
(*i*) L. C. Act, s. 15 (1), above, p. 418.
(*k*) *Ib.* (5).
(*l*) L. P. Act, s. 198, above, p. 201.
(*m*) See L. P. Act, 1926, s. 7 and Schedule, above, p. 560.

§ 2.—Of the Transfer pending Completion of the Rights and Liabilities under the Contract.

Treatise, pp. 502 to 541.

A contract by an "estate owner" (*n*) or by a person entitled at the date of the contract to have a "legal estate" (*n*) "conveyed" (*n*) to him (*o*) to sell and convey a "legal estate" (*n*) is an "estate contract," and, as such, registrable as a land charge (*p*), and is void against a purchaser of the land charged therewith, or of any interest in such land, unless registered before the completion of the purchase (*q*).

Treatise, p. 503.

"Without notice of the contract."

Sect. 30 of the Conveyancing Act, 1881, is repealed (*r*), and Part I. (sects. 1 to 5) of the Land Transfer Act, 1897, is superseded (*s*) in the case of deaths occurring after the commencement of the Administration Act, and the estate of a vendor so dying in the land contracted to be sold by him and not actually conveyed before his death, whether or not such estate had before his death become subject to a trust for the purchaser, will devolve upon his personal representative by virtue of the last-mentioned Act (*t*).

Treatise, pp. 503 to 506.

"Devolution of the vendor's estate."

Sect. 4 of the Conveyancing Act, 1881, is repealed (*u*) and not re-enacted.

Treatise, p. 504 and n. (*i*).

Where a person dies after entering into an enforceable contract for the sale of freehold land and before completion of the contract, his personal representatives can complete the contract and convey the land to the purchaser, if the vendor died before the commencement of the Administration Act, under the powers conferred upon them by sect. 2 of the Land Transfer Act, 1897, or by virtue of sect. 30 of the Conveyancing Act, 1881, if the vendor was a trustee for the purchaser; and if the vendor dies after such commencement, then under the powers conferred upon them by sect. 2 of the Administration Act (*v*).

Conveyance by personal representatives.

(*n*) See Table of Definitions, above, Part I., Chapter VII.
(*o*) See above, p. 674, n. (*l*).
(*p*) L. C. Act, s. 10 (1), Class C (iv), above, p. 407.
(*q*) L. C. Act, s. 13 (2), above, p. 403. As to an estate contract entered into before the commencement of the L. C. Act, see above, p. 408.
(*r*) Above, p. 17.
(*s*) Above, p. 5, n. (*i*).
(*t*) See A. E. Act, ss. 1, 3, above, pp. 432, 434.
(*u*) Above, p. 17.
(*v*) Above, p. 433.

Part IX. Sect XI.

Treatise, p. 506. "Estate tail."

An "entailed interest," including an estate tail created before the commencement of the Property Act, can take effect only as an "equitable interest" (*w*). There appears to be nothing in the Property Act or the Settled Land Act to prevent a "tenant in tail" (*x*) from contracting to sell his equitable interest as such, even where, being tenant in tail in possession, he can sell the legal estate in exercise of his powers as "tenant for life"; but, where the subject-matter of a contract for the sale or exchange of land is an entailed interest *in possession* and the vendor has power to vest in himself or in the purchaser the fee simple in the land (or, if the entailed interest is an interest in a term of years absolute, such term), or to require the same to be so vested, the contract will be deemed to extend to the fee simple in the land or the term of years absolute (*y*). A tenant in tail in possession, unless debarred by sect. 18 (*z*) of the Fines and Recoveries Act, 1833, can execute a disentailing assurance (*a*), and thereupon, being absolute owner (*b*), will be in a position to convey the legal estate or to require it to be conveyed to the purchaser.

Contract for sale by tenant in tail in possession.

Seeing that sect. 40 of the Fines and Recoveries Act, 1833 (3 & 4 Will. 4, c. 74), is not repealed, it is thought that this passage of the Treatise and the authorities cited in notes (*s*), (*t*) and (*u*) thereto apply equally to a contract made after the commencement of the Property Act for the sale of an entailed interest in possession.

Treatise, p. 506.

The effect of sect. 18 (*c*) of the Fines and Recoveries Act,

(*w*) L. P. Act, s. 1, above, p. 97; s. 130 (1), (7), above, pp. 181, 183.

(*x*) In the S. L. Act "tenant in tail" includes a person entitled to an entailed interest in any property: see Table of Definitions, above, Part I., Chapter VII.

(*y*) L. P. Act, s. 42 (4) (iii), above, p. 140.

(*z*) This section and the Act of 34 & 35 Hen. 8 therein referred to, intituled "An Act to embar feigned Recovery of Lands wherein the King is in reversion," notwithstanding their repeal by the L. P. Act, 1924, s. 10 and Tenth Schedule, are continued permanently in force by the Expiring Laws Continuance Act, 1925 (15 & 16 Geo. 5, c. 76, passed 10th December, 1925).

(*a*) Which need not be enrolled: see L. P. Act, s. 133, above, p. 187.

(*b*) Unless his beneficial interest in possession is "subject to any estates, interests, charges, or powers of charging, subsisting or capable of being exercised under a settlement," in which case he could only convey *free therefrom* as a person having the powers of a tenant for life under sect. 20 (1) (ix) of the S. L. Act. But see L. P. Act, 1926, s. 1, above, p. 540.

(*c*) See above, p. 680, n. (*z*). As to this section, see Carson's Real Property Statutes, 2nd ed., p. 277.

"Sale by tenant in tail under the Settled Land Acts."

1833, is that (1) a tenant in tail who is by Act of Parliament restrained from barring or defeating his estate tail, and (2) a tenant in tail after possibility of issue extinct, cannot bar his estate tail nor execute a valid disentailing assurance for that purpose. In each of these cases, however, the tenant in tail, when his estate or interest is in possession, has under the Settled Land Act, and had under the Settled Land Act, 1882, the powers of a tenant for life, and, in case (1), although the reversion is in the Crown, "but not including such a tenant in tail where the land in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services" (*d*).

Tenant in tail of land purchased with money provided by Parliament in consideration of public services.

There was no power under the Settled Land Act, 1882, to sell settled land which had been purchased with money so provided where the tenant in tail was so restrained; but, by virtue of sub-sect. (2) of sect. 23 (*e*) of the Settled Land Act, the trustees of a settlement of land so purchased, where the tenant in tail is restrained from barring or defeating his estate tail, will be the "statutory owners," and, as such, have the powers of a tenant for life under the Act, except that, if the tenant in tail is of full age and capacity, the powers shall not be exercised without his consent, but a purchaser is not concerned to see or inquire whether such consent has been given.

Treatise, p. 507. "Copyholds."

All copyhold land having been enfranchised (*f*), this passage can, of course, have no application to the case of a vendor dying after the commencement of the Law of Property Act, 1922.

Treatise, p. 507. "Leaseholds."

It seems that the leaseholds for years of a person dying after the commencement of the Administration Act will pass to his personal representatives by virtue of the express provisions of that Act (*g*).

Treatise, p. 509. Statute of Frauds.

For the reference on this page to the Statute of Frauds must be substituted a reference to sect. 40 of the Property Act (*h*).

(*d*) See S. L. Act, s. 20 (1) (i), above, p. 258.
(*e*) Above, p. 255.
(*f*) Above, Part II., Chapter II.
(*g*) See A. E. Act, ss. 1, 3, above, pp. 432, 434.
(*h*) Above, Part IX., Section I., p. 565.

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Treatise, pp. 510, 511 and nn. (*y*) and (*z*).

"Conveyance of deceased vendor's estate by vesting order."

The repeal of the sections referred to in note (*y*) to this passage, and of other sections of the Lunacy Act, 1890, and the Acts amending the same, has already been noticed (*i*). The sections of the Trustee Act, 1893, which are referred to in note (*z*) to this passage, are repealed (*k*) and re-enacted (*l*), with considerable amendments, by the corresponding sections of the Trustee Act (*m*). The effect of these repeals and enactments, and of sect. 41 of the Trustee Act (*n*), is that the Judge or Master in Lunacy has no power to make an order in relation to "lunatics" (*o*) or "defectives" (*o*) who are trustees except in the few cases in which, under sect. 54 of the Trustee Act (*p*) and the rules made thereunder (*q*), the High Court and the Judge or Master in Lunacy have concurrent jurisdiction.

Treatise, pp. 512, 513 and nn. (*h*) and (*i*).

"Contracts for the sale of settled land under the Settled Land Acts."

The sections here referred to (*r*) of the Settled Land Act, 1882, and the Settled Land Act, 1890, are replaced respectively by sects. 90 (1) (2), 20 (*s*) and 63 of the Settled Land Act. If one seised of lands in fee should sell them and die pending completion, the lands, if he should have died after the commencement of the Administration Act, would vest in his personal representative, who would be bound to give effect to the contract if it were a valid and binding contract (*t*).

Treatise, p. 515 and n. (*z*).

"Purchaser's heir or devisee now takes subject to the vendor's lien."

There can, of course, be no person taking by descent as heir of a person dying intestate after the commencement of the Administration Act (*u*). Sect. 35 of the same Act (*v*), replacing, in the case of a person dying after the commencement of that Act, Locke King's Act and the Acts amending the same, makes *any* property of the deceased, which at the time of his death is charged with the payment of money (including a lien for unpaid purchase-money), primarily liable for the payment of the charge, as between the different persons claiming through

(*i*) Above, Part V., Chapter VI., p. 387.
(*k*) T. Act, s. 70 and Second Schedule.
(*l*) Except L. T. 1893, s. 34, which is not re-enacted.
(*m*) See the Table, above, Part V., Chapter I., and *ib.*, Chapter VI., Section ii.
(*n*) Above, *ib.*, Section i.
(*o*) See Table of Definitions, above, Part I., Chapter VII.
(*p*) Above, p. 386.
(*q*) Above, p. 387 and n. (*s*).
(*r*) Repealed, S. L. Act, s. 119 and Fifth Schedule.
(*s*) Above, p. 263.
(*t*) See A. E. Act, Part I., above, Part VII., Chapter II.
(*u*) A. E. Act, s. 45, above, Part VII., Chapter V., p. 449.
(*v*) *Ib.*, Chapter IV., p. 448.

the deceased, unless the deceased has signified a contrary intention.

Treatise, p. 523. "Bankruptcy of tenant for life empowered to consent to sale."

Since the commencement of the Settled Land Act a power of sale of the settled land given to the trustees of the settlement is exercisable only by the tenant for life or statutory owner (*w*). Where a tenant for life becomes bankrupt after such commencement, his statutory power of sale is unaffected. For, though his "equitable interest" vests in the trustee in his bankruptcy, the trustee is deemed to be an "assignee for value" of such interest for the purposes of sect. 104 of the Settled Land Act, and the consent of the trustee is not necessary to any exercise of the statutory power of sale (*x*). In a case of such bankruptcy, however, it might be practicable to apply to the Court under sect. 24 of the Act (*y*) for an order authorising the trustees of the settlement to exercise in the name and on behalf of the tenant for life any of the powers of a tenant for life under the Act (*z*).

Treatise, pp. 528, 529. "Land taken in execution pending completion."

The Land Charges Acts, 1888 and 1900, are repealed by the Land Charges Act (*a*), and the provisions of the repealed Acts relating to the registration of writs and orders affecting land are re-enacted, with amendments, by Part III. of the Land Charges Act (*b*). Sect. 13 of the Judgments Act, 1838 (1 & 2 Vict. c. 110), is repealed (*c*) and replaced by sub-sects. (1), (2) and (3) (ii) and (iii) of sect. 195 of the Property Act, and sub-sects. (1) and (2) of sect. 2 of the Land Charges Act, 1900, are replaced by sub-sects. (3) (i) and (4) of the same section of the Property Act. Apart from the substitution of the new for the repealed enactments, and subject to what is stated in the next following paragraph of this commentary, the law as stated in this passage of the Treatise appears to be unaffected.

(*w*) S. L. Act, ss. 108, 109, above, Part IV., Chapter III., pp. 269, 270.

(*x*) S. L. Act, s. 104 (1), (4), (10), above, Part IX., Section IX., pp. 629 *et seq.*

(*y*) Above, p. 255.

(*z*) As to the "legal estate" of a bankrupt tenant for life, see S. L. Act, s. 103, above, p. 634.

(*a*) Above, Part VI., Chapter I.

(*b*) *Ib.*, Chapter IV., where attention is drawn to the amendments, of which the principal is that a receiving order in bankruptcy made after the commencement of the L. C. Act may be registered in the register of writs and orders, whether or not it is known to affect land.

(*c*) L. P. Act, s. 207 and Seventh Schedule.

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Treatise, p. 529. Notice of actual delivery in execution under unregistered writ or order.

The doubt expressed on this page of the Treatise whether, if the purchaser have notice that the land sold has already been delivered in execution under an unregistered writ or order, he can safely disregard the fact, appears to be removed by sub-sect. (1) (i) of sect. 199 of the Property Act (*d*), which provides that a purchaser shall not be prejudicially affected by notice of any instrument or matter capable of registration under the provisions of the Land Charges Act or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of the non-registration thereof.

Treatise, pp. 530, 531. Lunacy.

Express provision for the conveyance of a legal estate vested in a "lunatic" (*e*) or "defective" (*e*) by his "committee" (*e*) or receiver under an order in lunacy or otherwise is made by sect. 22 of the Property Act (*f*), and, in the case of settled land, by sect. 28 of the Settled Land Act (*g*).

Treatise, p. 531 and n. (*u*). Vesting orders.

The alterations in the law as to the jurisdiction to make vesting orders in the case of lunatics have already been noticed (*h*).

Treatise, pp. 532, 533 and nn. (*e*), (*f*) and (*k*). Married woman trustee.

The changes in the law as to the powers of married women who are trustees are considered hereafter in connection with § 6 of Chapter XVI. of the Treatise, which treats "Of personal incapacity" (*i*).

Treatise, p. 533. "Conviction of treason or felony."

The provisions of the Forfeiture Act, 1870 (33 & 34 Vict. c. 23), in regard to the land of a convict, are expressly saved by sub-sect. (3) of sect. 7 of the Property Act (*k*).

Treatise, pp. 535, 536. "To purchaser for value without notice."

Reference has already been made to the effect of registration of an "estate contract" as a land charge (*l*) and to the abolition of the right to tack (*m*).

(*d*) Above, Part III., Chapter X., p. 199.
(*e*) See Table of Definitions, above, Part I., Chapter VII.
(*f*) Above, Part III., Chapter XV., p. 221.
(*g*) Below, Section XVI., § 3.
(*h*) Above, p. 682.
(*i*) Below, Section XVI., § 6.
(*k*) Above, Part III., Chapter XV., p. 219.
(*l*) Above, p. 679.
(*m*) Above, p. 675.

Sub-sect. (6) of sect. 25 of the Judicature Act, 1873, is repealed (*n*) and replaced by sect. 136 of the Property Act.

Treatise, p. 537 and n. (*i*). "Assignment of the benefit of the contract."

Where a "legal estate" (*o*) in land (not being settled land) belongs beneficially to persons as joint tenants, it is held on trust for sale, as if the beneficiaries were tenants in common, but not so as to sever their tenancy in equity (*p*). Any one joint tenant may sever the joint tenancy in equity by notice in writing to his co-tenants of his desire to do so or by any means, *e.g.*, by contracting to sell his share, which, in the case of personal estate, would have been effectual for that purpose (*q*). Such a contract would operate as a contract to sell the vendor's share in the net proceeds of sale and the net rents and profits until sale and not as a contract for the sale of "land" (*r*). The contract would be a "dealing" of which notice in writing should be given to the trustees for sale (*s*).

Treatise, p. 540. Contract for sale by a joint tenant of his share.

Where the contract for sale is by trustees for sale, the purchaser is not concerned with the interests of the persons beneficially interested in the proceeds of sale (*t*) and has no remedy against them; but he *is* concerned to see that he will get a valid receipt for the purchase-money under the new sub-sect. (2) of the same section (*u*), and that if the trust for sale is created by a disposition on trust for sale, the consents (if any) required by such disposition to the execution of the trust are obtained (*v*); though, if by such disposition the consent of more than two persons is required, the consent of any two of them will be sufficient (*w*).

Treatise, p. 540. Contract for sale by trustee for sale.

It is thought that the cases, if any, in which trustees with an *express* power of sale, as distinguished from a trust for sale, can exercise the same after the commencement of the Property

Treatise, p. 540. Contract for sale by trustees with power of sale.

(*n*) L. P. Act, s. 207 and Seventh Schedule.
(*o*) L. P. Act, s. 1, above, p. 97.
(*p*) L. P. Act, s. 36 (1), above, p. 163.
(*q*) *Ib.* (2).
(*r*) *Ib.*, s. 42 (6), above, p. 140.
(*s*) *Ib.*, s. 137, above, p. 191.
(*t*) *Ib.*, s. 27 (1), above, p. 170.
(*u*) L. P. Act, 1926, s. 7 and Schedule, above, p. 553. For the extension of the definition of "trust corporation," see *ib.*, s. 3, above, p. 543.
(*v*) L. P. Act, s. 28 (1), above, p. 171.
(*w*) *Ib.*, s. 26 (1), above, p. 169. See also *ib.*, sub-s. (2) and the new sub-sect. (3) of the same section, L. P. Act, 1926, s. 7 and Schedule, above, p. 552.

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and Settled Land Acts will be few. For, where a disposition or settlement coming into operation after the commencement of the Property Act contains a trust either to retain or sell land, the same will be construed as a trust to sell the land with power to postpone the sale (*x*); and since the commencement of the Settled Land Act, an express power of sale given to the trustees of a settlement of land has ceased to be exercisable by them, and is deemed to be a power conferred on the tenant for life (*y*).

(*x*) L. P. Act, s. 25 (4), above, p. 169.
(*y*) S. L. Act, ss. 108, 109, above, p. 269.

SECTION XII.

Treatise, Chap. XII. pp. 542 to 699.

OF THE COMPLETION OF THE CONTRACT.

§ 1.—Of Completion Generally.

Treatise, p. 547 and n. (*s*). "Acceptance by not sending in requisitions in time." *Soper* v. *Arnold.*

If in the case put in this passage and forming the basis of the decision in *Soper* v. *Arnold*, the purchaser should bring an action to recover his deposit, the Court would now have a discretion to order its return (*a*).

§ 2.—Of Searches and Inquiries.

Treatise, p. 548 and n (*t*). Land Transfer Acts, 1875 and 1897. Copyholds.

The Land Transfer Acts, 1875 and 1897, are repealed (*b*) and replaced by the Registration Act (*c*). All copyhold land is enfranchised (*d*).

Treatise, p. 548 and nn. (*z*), (*a*), (*b*), (*c*) and (*d*). "Judgments, Crown debts and writs of execution."

The Land Charges Acts, 1888 and 1890, are repealed and, for the most part, replaced by the Land Charges Act (*e*). But sub-sects. (1) and (2) (*f*) of sect. 2 of the Land Charges Act, 1900, are re-enacted by sub-sects. (3) (i) and (4) of sect. 195 of the Property Act. Sub-sect. (3) of sect. 2 of the Land Charges Act, 1900, is not re-enacted, but the repeal of this sub-section does not, of course, revive the registers closed by that sub-section. "Judgment" in the Land Charges Act includes any order, rule or decree having the effect of a judgment, *not* excepting an order made by a Court having bankruptcy jurisdiction in exercise of that jurisdiction (*g*).

(*a*) See L. P. Act, s. 49 (2), above, Section I., p. 566.
(*b*) Except Part I. of the L. T. Act, 1897.
(*c*) Above, Part VIII., Chapter I.
(*d*) Above, Part II., Chapter II.
(*e*) Above, Part VI., Chapter I.
(*f*) These sub-sections are repealed also by the L. P. Act, s. 207 and Seventh Schedule.
(*g*) L. C. Act, s. 20 (5). See above, p. 398.

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Treatise, p. 549 and nn. (*o*), (*q*), (*r*) and (*s*). "Writs and orders affecting land are void against purchasers for value, unless registered."

Sect. 4 of the Land Charges Act, 1885, is the "interpretation" section, and is superseded by sect. 20 of the Land Charges Act. Sects. 5 and 6 of the Land Charges Act, 1888, as extended by sect. 3 of the Land Charges Act, 1900, are replaced by sects. 6 (1) (a) (b), (2), (3) and 7 (1) of the Land Charges Act (*h*). The definition of "purchaser" in the Land Charges Act is the same as in sect. 4 of the Land Charges Act, 1888 (*i*).

Treatise, pp. 550, 551 and nn. (*y*), (*z*), (*a*), (*b*) and (*c*). "Judgments now operate as a charge when the writ or order of execution is registered." *Ashburton* v. *Nocton*.

As we have seen (*k*), sub-sects. (1) and (2) of sect. 2 of the Land Charges Act, 1900, are re-enacted by sub-sects. 3 (i) and (4) of sect. 195 (*l*) of the Property Act. Sub-sects. (1), (2) and (3) (ii) and (iii) of the last-mentioned section re-enact, in substance, sect. 13 (*m*) of the Judgments Act, 1838 (1 & 2 Vict. c. 110). The effect of these re-enactments appears to be to leave unaffected the decision in *Ashburton* v. *Nocton*, (1915) 1 Ch. 274. With reference to the further decision in that case, noticed on p. 551 of the Treatise, it must be borne in mind that, since the commencement of the Property Act, the legal estate of a mortgagor can never be outstanding in a mortgagee (*n*).

Treatise, pp. 552, 553. "Notice of unregistered process of execution."

It is thought that, since the commencement of the Property Act, executions actually put in force against lands under unregistered process are ineffectual against purchasers, even though they have express notice of the same (*o*).

Treatise, p. 553. "Orders made in exercise of bankruptcy jurisdiction."

A receiving order in bankruptcy made after the commencement of the Land Charges Act may be registered in the register of writs and orders, and will be void against a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy, unless it is for the time being so registered (*p*).

(*h*) L. C. Act, Part III., above, Part VI., Chapter IV.
(*i*) L. C. Act, s. 20 (8).
(*k*) Above, p. 683.
(*l*) In this section "judgment" includes any decree, order or rule having the effect of a judgment: sub-sect. (5).
(*m*) Except the proviso to that section that "nothing herein contained shall be deemed or taken to alter or affect any doctrine of courts of equity, whereby protection is given to purchasers for valuable consideration without notice." The section is repealed by L. P. Act, s. 207 and Seventh Schedule.
(*n*) See above, p. 111.
(*o*) See L. P. Act, s. 199 (1) (i), above, p. 199.
(*p*) L. C. Act, ss. 6 (1) (c), 7 (1), above, Part VI., Chapter IV.

An annuity of the kind referred to in sects. 12 and 14 (*q*) of the Judgments Act, 1855 (18 & 19 Vict. c. 15), is an "annuity" within the meaning of Part II. of the Land Charges Act (*r*). The register of "annuities" kept at the Land Registry is closed except as regards entries made before the commencement of the Land Charges Act (*s*), but an "annuity" created before such commencement and not registered in that register may be registered as a land charge of Class E (*t*). No "annuity" created after such commencement can be registered. An "annuity" which before such commencement was capable of being registered in the register of annuities is void as against a creditor or a purchaser of any interest (*u*) in the land charged therewith unless the annuity is for the time being registered in the register of annuities, or in the register of land charges as a land charge of Class E (*v*). In certain cases an "annuity," although registered, will be overreached by a conveyance of the legal estate in the land affected thereby (*w*).

Treatise, p. 554 and n. (*x*). "Annuities or rentcharges."

It seems that, as regards purchases since the commencement of the Property Act, *Greaves* v. *Tofield*, 14 C. D. 563, is overruled, and annuities capable of being, but not, registered will be void against a purchaser even with express notice of them (*x*).

Treatise, p. 554 and n. (*y*). "Notice of life annuities."

Since the commencement of the Property Act the only annuity or rentcharge capable of subsisting as a "legal" annuity or rentcharge is a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute (*y*). Such a charge will affect the lands charged in the purchaser's hands. All other annuities or rentcharges will be "equitable interests" and, unless capable of being, and in fact registered as a land charge of a class not capable of being so overreached (*z*), will be overreached by a conveyance of

Treatise, p. 554. Annuities or rentcharges not required to be registered.

(*q*) Both repealed: L. C. Act, s. 24 and Schedule.
(*r*) Above, Part VI., Chapter III.
(*s*) L. C. Act, s. 4 (1), (2), (4), above, pp. 396, 397.
(*t*) Above, p. 414.
(*u*) That is, whether a legal estate or an equitable interest.
(*v*) L. C. Act, s. 5, above, p. 397.
(*w*) See L. C. Act, s. 22 (1), above, p. 422.
(*x*) L. P. Act, s. 199 (1) (i), above, p. 199.
(*y*) *Ib.*, s. 1 (2) (b), above, p. 98.
(*z*) See L. C. Act, s. 22 (1), above, p. 422.

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the legal estate affected (1) by a tenant for life under sect. 72 of the Settled Land Act (*a*); (2) by trustees for sale under sect. 28 (1) of the Property Act (*b*); or (3) by personal representatives under sect. 39 of the Administration Act (*c*). Any annuity or rentcharge which can be so overreached need not be disclosed in the abstract of title (*d*).

Treatise, p. 555. Abstract.

Treatise, p. 555 and nn. (*d*) and (*f*). "Land charges."

The provisions of the Land Charges Act relating to the several kinds of "land charge" thereby constituted, namely, land charges of Classes A, B, C, D and E (*e*), and "local land charges" (*f*), have already been considered in detail (*g*), and, as we have seen (*h*), sects. 12 and 13 of the Land Charges Act, 1888, are re-enacted in substance by sects. 13 (1) and 14 (1) of the Land Charges Act in relation to land charges of Class A, which include all land charges within the meaning of the Act of 1888.

Treatise, p. 555. "Notice of unregistered land charges."

The effect of sub-sect. (1) (i) of sect. 199 (*i*) of the Property Act appears to be that a purchaser is wholly unaffected by notice of a land charge which is void or not enforceable as against him by reason of not being registered.

Treatise, p. 558 and n. (*f*). "Statutory charges on land of a principal sum, not payable by way of annuity."

Any charge acquired either before or after the commencement of the Land Charges Act by any local authority under any statute (public, general, or local or private), which takes effect by virtue of the statute, *e.g.*, under sect. 257 of the Public Health Act, 1875, is a "local land charge" and must be registered in the prescribed manner by the proper officer of the local authority, and (except as provided in regard to charges created or arising before such commencement) will be void as against a purchaser for money or money's worth of a legal estate in the land affected thereby, unless registered in the appropriate register before the completion of the purchase (*k*).

(*a*) Above, p. 326. (*b*) Above, p. 170.
(*c*) Above, Section VII., p. 597.
(*d*) L. P. Act, s. 10, above, Part III., Chapter XII.
(*e*) L. C. Act, Part V., ss. 10 to 14.
(*f*) *Ib.*, Part VI., s. 15, now amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 560.
(*g*) Above, Part VI., Chapters VI. and VII.
(*h*) Above, p. 405.
(*i*) Above, p. 199.
(*k*) L. C. Act, s. 15 (1), (5), above, Part VI., Chapter VII. Sect. 257 of the Public Health Act, 1875, is amended as to the rate of interest chargeable by sect. 77 of the Public Health Act, 1925.

Treatise, p. 558. What are *land charges* created after 1888.

All land improvement rentcharges created after the year 1888 which come within the description of land charges contained in the Land Charges Act of 1888 are land charges of Class A, as defined in the Land Charges Act, and must be registered accordingly in order to be effectual as against a purchaser for value of the land charged (*l*). The Agricultural Holdings Acts, 1908 to 1920, are repealed and consolidated by the Agricultural Holdings Act, 1923 (*m*), and a charge under sect. 20 or sect. 41 of that Act or any previous similar enactment is expressly included as a land charge of Class A (*l*). As we have seen (*n*), a charge given by sect. 257 of the Public Health Act is a local land charge, as is also a charge given under sect. 13 of the Private Street Works Act, 1892.

Treatise, p. 559. "*Lis pendens*." "Lands in Lancashire and Durham."

The law as to the registration of pending actions is now contained in Part I. (sects. 2 and 3) of the Land Charges Act (*o*), which re-enacts in substance the provisions of sect. 7 (*p*) of the Judgments Act, 1839. Sect. 3 of the Judgments Act, 1855 (18 & 19 Vict. c. 15) is repealed (*p*), and no separate search for pending suits in the Palatine Courts appears to be necessary.

Treatise, pp. 560, 561. "Bankruptcy."

A petition in bankruptcy filed after the commencement of the Land Charges Act may be registered in the register of pending actions (*q*), and a receiving order in bankruptcy made after such commencement, whether or not it is known to affect land, may be registered in the register of writs and orders (*r*). The protection against an unregistered pending action given to a purchaser without express notice thereof by sub-sect. (1) of sect. 3 of the Land Charges Act is qualified by the proviso that, as respects a petition in bankruptcy, this sub-section only applies in favour of a purchaser of a legal estate in good faith, for money or money's worth, without notice of an available act of bankruptcy (*s*), and the protection against an unregistered writ or order given to a purchaser by sub-sect. (1) of sect. 7 of the Act is qualified by a like proviso as respects a receiving order

(*l*) Above, Part VI., Chapter VI., Section ii.
(*m*) See Addenda, Treatise, Vol. II., p. xxxviii.
(*n*) Above, p. 690.
(*o*) Above, Part VI., Chapter II.
(*p*) Repealed, L. C. Act, s. 24 and Schedule.
(*q*) L. C. Act, s. 2 (1), above, Part VI., Chapter II
(*r*) L. C. Act, s. 6 (1) (c), above, Part VI., Chapter IV.
(*s*) Above, *ib.*, Chapter II.

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in bankruptcy (*t*). It is also provided that the title of a trustee in bankruptcy acquired after the commencement of the Act shall be void against a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy, claiming under a conveyance made after the date of registration of the petition in bankruptcy as a pending action, unless, at the date of the conveyance, either the registration of the pending action is in force or the receiving order is registered in the register of writs and orders (*u*).

Treatise, pp. 561, 562 and nn. (*j*), (*l*) and (*m*). "Deeds of arrangement."

The provisions of sects. 7 to 9 of the Land Charges Act, 1888, are re-enacted by sects. 8 and 9 of the Land Charges Act (*v*), but with the important modification, introduced by sub-sect. (4) of sect. 8 of the latter Act, as to re-registration every five years (*v*). In the Land Charges Act "deed of arrangement" has the same meaning as in the Deeds of Arrangement Act, 1914 (*w*). Sect. 4 of the Land Charges Act, 1900, is replaced by sect. 18 of the Land Charges Act (*x*).

Treatise, p. 562 and n. (*s*). "Disentailing assurances." "Deeds acknowledged."

The Supreme Court of Judicature (Officers) Act, 1879 (42 & 43 Vict. c. 78) is repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*y*), and replaced by Part V. of the latter Act.

Treatise, pp. 562, 563. "Search to ascertain if the title is registered."

As we have seen, the Land Transfer Acts, 1875 and 1897, and the Rules made thereunder, are repealed (*z*) and replaced respectively by the Land Registration Act and the Land Registration Rules, 1925. Of these Rules those relating to the documents open to inspection are Rules 8, 9, 10 and 12.

Treatise, p. 563. "Search in Middlesex and Yorkshire Registries."

What instruments made after 1925 may be registered.

It is not necessary to register a memorial of any instrument made *after* the commencement of the Property Act in any local deeds registry unless the instrument operates to transfer or create a "legal estate" (*a*), or to create thereon a "charge by way of legal mortgage" (*a*); nor will the registration of any instrument not required to be registered affect any priority.

(*t*) Above, Part VI., Chapter IV.
(*u*) L. C. Act, ss. 3 (3), 7 (2), above, pp. 395, 399.
(*v*) Above, p. 400.
(*w*) L. C. Act, s. 20 (3).
(*x*) Above, p. 416.
(*y*) Sect. 226 and Sixth Schedule.
(*z*) With a few exceptions: above, Part VIII., Chapter I., p. 459.
(*a*) See Table of Definitions, above, Part I., Chapter VII.

Probates and letters of administration are to be treated as instruments capable of transferring a legal estate to personal representatives; and memorials of all instruments capable of transferring or creating a legal estate or charge by way of legal mortgage may, when so operating, be registered (*b*). Notwithstanding this enactment (*b*), it is provided by sub-sect. (6) (*c*) that, in the case of a "general equitable charge" (*d*), "restrictive covenant" (*e*), "equitable easement" (*e*), or "estate contract" (*d*) affecting land within any of "the three ridings" (*f*), and in the case of any other land charge (not being a local land charge) created by a document which shows on the face of it that the charge affects land within any of those ridings, registration shall be effected in the prescribed manner in the appropriate local deeds registry in place of the registry (*g*).

Though all copyhold land is enfranchised (*h*), reference to the Court Rolls may still be necessary. Provision is accordingly made for their inspection, admissibility in evidence and safe custody (*i*).

Treatise, p. 563. "Copyholds."

The enumeration here given of the usual searches holds good subject to the following observations:—

Treatise, pp. 563 to 566. "What searches should usually be made."

The search for writs and orders will include receiving orders made after 1925.

1. Writs and orders affecting land.

The search for pending actions will include petitions in bankruptcy filed after 1925. No separate search for pending actions in the Lancaster or Durham Court of Chancery appears to be necessary.

2. *Lis pendens.*

"Annuities" created before 1926 may be found registered either in the register of annuities, or, if registered after 1925, as a land charge of Class E.

3. Life annuities.

(*b*) L. P. Act, s. 11, above, p. 200.
(*c*) That is, the new sub-sect. (6) substituted by L. P. Act, 1926, s. 7 and Schedule. The old sub-sect. (6) is set out above, p. 415.
(*d*) Above, p. 407.
(*e*) Above, p. 412.
(*f*) Above, p. 415, n. (*n*).
(*g*) The words "and in the case of" to the end of the sub-section are new.
(*h*) Above, Part II., Chapter II.
(*i*) L. P. Act, 1922, ss. 144, 144A, above, pp. 87, 88.

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4. Bankruptcy.

These searches will still be necessary where the vendor or some former owner may have been in embarrassed circumstances before 1926.

5. Deeds of arrangement.

By sect. 22 of the Administration of Justice Act, 1925 (*k*), the office for the registration of deeds of arrangement under the Deeds of Arrangement Act, 1914, was transferred to the Board of Trade.

7. Land charges.

Owing to the great extension of the range of matters capable of registration as land charges, a search for land charges (not being local land charges) should always be made at the Land Registry.

9. Court Rolls.

On the purchase of enfranchised land (*l*), a search in the Court Rolls may still be necessary in respect of the title to the land before enfranchisement (*m*). It should always be seen whether an "assurance" of the enfranchised land which ought to have been produced to the steward of the manor for endorsement has been duly endorsed (*o*).

Local land charges.

To the list of searches enumerated on pp. 563 to 566 of the Treatise must be added a search for local land charges, which should be made by obtaining a certificate of search from the clerk or other proper officer by whom the local register is kept as prescribed by the Local Land Charges Rules, 1925. By the end of 1926 all local land charges created before that year should have been entered in the local register (*p*).

Treatise, p. 566. Searches necessary on every sale.

The searches unquestionably necessary on every sale will now include a search for land charges.

Treatise, pp. 566 to 569. "Against what names searches should be made."

Sect. 11 of the Judgments Act, 1855 (18 & 19 Vict. c. 15), is repealed (*q*) and replaced by sect. 3 (iv) of sect. 195 of the Property Act. Sect. 13 of the Judgments Act, 1838 (1 & 2 Vict. c. 110), is repealed (*q*) and replaced by sub-sects. (1), (2) and (3) (ii) and (iii) of the same sect. 195, and sub-

Ib. p. 567 and n. (*h*). Mortgagee paid off.

(*k*) 15 & 16 Vict. c. 25. As to the commencement of the Act, see sect. 29 (5); and as to the repeal of certain sections of the Deeds of Arrangement Act, 1914, see sect. 29 (4) and Fifth Schedule.
(*l*) See above, Part II., Chapter II.
(*m*) As to the custody of the Court Rolls, see above, p. 693.
(*o*) See L. P. Act, 1922, s. 129, above, p. 63.
(*p*) See L. C. Act, s. 15, sub-s. (5), above, p. 418.
(*q*) L. P. Act, s. 207 and Seventh Schedule.

sects. (1) and (2) of sect. 2 of the Land Charges Act, 1900, are repealed (*q*) and replaced by sub-sects. (3) (i) and (4) of the same sect. 195. There can, since the commencement of the Property Act, be no *legal* estate of freehold in reversion or remainder expedient on an estate of freehold (*r*). Land charges must now be entered in the name of the estate owner whose estate is intended to be affected (*s*). The search for land charges created after 1888 and before 1926 should be obtained against each successive owner or person disclosed by the abstract who might have created the charge. The search for land charges created since 1925 should go back to the 1st January, 1926, unless the title disclosed commences at a later date and then to the commencement of such title. After the 31st December, 1926, the search for deeds of arrangement need only be carried back for five years.

Ib. pp. 567, 568 and n. (*i*).
Ib. p. 568. Legal remainders.
Ib. p. 569. Land charges.
Deeds of arrangement.

The Land Charges Act does not, save as regards local land charges, affect registered land (*t*).

Registered land.

Since 1925 there *is* an obligation on a purchaser to search; for, as regards lands in a register county, registration of a memorial of an instrument required to be registered constitutes actual notice of the instrument or the transaction thereby effected, so long as the registration is in force; and the registration of any instrument or matter required or authorised to be registered under the Land Charges Act constitutes actual notice of such instrument or matter, so long as the registration is in force (*u*).

Treatise, p. 569. "No obligation on purchaser to search."

Sect. 2 of the Conveyancing Act, 1882, and sect. 17 of the Land Charges Act, 1888, are repealed and replaced by sect. 17 of the Land Charges Act (*v*). The Land Charges Rules, 1925 (*w*), as amended by the Land Charges Rules, 1926 (*x*), replace the Land Charges Rules, 1889, and the Rules made

Treatise, pp. 570, 571. "Official searches."

(*q*) L. P. Act, s. 207 and Seventh Schedule.
(*r*) Above, Part I., pp. 97 to 99.
(*s*) L. C. Rules, 1925, r. 6.
(*t*) See above, Part VIII., Chapter V., Section vi.
(*u*) See L. P. Act, ss. 197, 198, above, Part III., Chapter X., pp. 200, 201; and as to "equivalent registration," see L. P. Act, s. 205 (3); S. L. Act, s. 117 (3), above, p. 25.
(*v*) Above, Part VI., Chapter VIII.
(*w*) Above, p. 391.
(*x*) Above, p. 546.

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under sect. 2 of the Conveyancing Act, 1882. Under the new Rules the form of "Application for an Official Search" (*y*) requires a search of the Alphabetical Index to the Registers for subsisting entries against specified *names*, though the schedule to the Form has columns for the Christian names and for "all addresses," &c., and the Official Certificate at the foot of the Form and given under the seal of the Registry states that the search "against the above" reveals no subsisting entries, or, as the case may be, only the subsisting entries set out in the Schedule thereto, and the Schedule includes the *name* only, with no address or description. It is now generally recognised that the best course to take is to direct an official, instead of making a private, search. Applications for an official search must be prepared and forwarded to the Registry in duplicate; and an official certificate of the result of searches will extend to registrations effected during the day of the date of the certificate, and will be issued only after the office is closed for registrations on that day (*z*).

Treatise, p. 572. "Official searches for disentailing deeds, and in the Yorkshire and Middlesex Registries."

The Land Registry (Middlesex Deeds) Rules, 1892, 1913, and 1914, are rescinded and replaced by the Land Registry (Middlesex Deeds) Rules, 1926 (*a*).

Treatise, pp. 572, 573. "Inquiries to be made before completion."

General charge.

Statutory charges of the kind referred to in this passage are now "local land charges" (*b*). Until the local registers are completed, as they should be by the end of 1926, the inquiries here recommended should be continued. Where a local authority has expended money for any purpose which, where the work is completed and any requisite resolution is passed or order is made, will confer a charge upon land, the proper officer of the local authority may in the meantime register a local land charge in his register against the land *generally*, without specifying the amount (*c*). The registration of the general charge is to be cancelled within one year after the

(*y*) See Form L. C. 11 scheduled to the L. C. Rules, 1925.

(*z*) L. C. Rules, 1926, No. 1 (7), (8). The Land Charges Fees Order, 1925, is annulled and replaced by the Land Charges Fees Order, 1926.

(*a*) S. R. & O. 1926, No. 32/L. 5, superseding the Land Registry (Middlesex Deeds) Provisional Rules, 1925 (W. N., 2nd January and 27th March, 1926). Rules 6 to 11 of the new Rules take the place of the rescinded Rules referred to in n. (*i*) on p. 572 of the Treatise.

(*b*) Above, Part VI., Chapter VII.

(*c*) See L. C. Act, s. 15 (4), above, p. 419.

charge is ascertained and allotted (*c*), and thereupon the specific local land charge, unless previously discharged, is to be registered as of the date on which the general charge was registered (*d*). The question arises whether, as between vendor and purchaser, the former or the latter is liable to pay a specific charge registered after the completion of the purchase in respect of a general charge registered before such completion. It might be contended that the vendor is liable on the ground that the specific charge is to be registered *as of the date on which the general charge was registered*. When a contract is entered into for the sale of land which is subject, or before completion may become subject, to a general charge, it will be desirable to provide by special condition who is to be liable for the amount of the charge when it becomes specific.

Searches for local land charges.

Rule 10 of the Local Land Charges Rules, 1926, provides that the provisions of sub-sects. (1), (2), (3), (7), (8) and (9) of sect. 17 (*e*) of the Land Charges Act shall apply to the registrars and registries of local land charges, and the same Rules prescribe Forms of Requisition for an Official Search and of Official Certificate of Search.

Treatise, p. 574. "Inquiry of tenants and occupiers as to their interest."

Sect. 14 of the Property Act expressly saves the interests of persons in possession (*f*).

§ 3.—Of the Preparation of the Conveyance.

Treatise, p. 577. "Who are necessary parties to the conveyance."

Cases in which persons having only an "equitable interest" (*g*) in land will be necessary parties to the conveyance of the legal estate will be rare under the present law (*h*); and an instrument relating only to equitable interests or powers which will be overreached by the conveyance of the estate to which title is being shown need not be disclosed in the abstract (*i*).

(*c*) See Local Land Charges Rules, 1926, r. 8 (1).
(*d*) See L. C. Act, s. 15 (4), above, p. 419.
(*e*) Above, p. 420.
(*f*) Above, p. 220, and see above, p. 650.
(*g*) See L. P. Act, s. 1, above, p. 97.
(*h*) See L. P. Act, s. 2, above, p. 203, as amended by the L. P. Act, 1926, s. 7 and Schedule, above, p. 551; L. P. Act, s. 27 (1), above, p. 170; S. L. Act, s. 72, above, p. 326; A. E. Act, s. 39, above, p. 597.
(*i*) L. P. Act, s. 10, above, Part III., Chapter XII.

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Treatise, p. 577. Power of appointment.

All powers of appointment (except powers vested in a legal mortgagee or in an estate owner in right of his estate) are now equitable (*k*), and a will can only operate to create equitable interests (*l*).

Treatise, pp. 577, 578. "Trust for or power of sale with consent of some person."

A trust for sale must be exercised with such consents (if any) as are required by the instrument (if any) creating the trust (*m*), but if the consent of more than two persons is required, the consent of any two of them will be sufficient in favour of a purchaser (*n*); and, where a person whose consent is required is not *sui juris* or becomes subject to disability, his consent is not, in favour of a purchaser, to be deemed to be requisite (*o*). It is thought that the practice, as stated in this passage, as to the concurrence of a person whose consent is required, will still hold good.

Treatise, p. 578. "Sale under Settled Land Acts."

We have already seen what estates and interests will not be displaced or defeated by the conveyance of a tenant for life (*p*).

Treatise, p. 578. "Sale by order of the Court."

It is now provided that a conveyance to a purchaser of a legal estate in land under an Order of the Court will overreach an equitable interest or power, if such interest or power is bound by the order, and any capital money arising from the transaction is paid into, or in accordance with the order of, the Court (*q*).

Treatise, p. 578. "Intermediate trustees."

The only case likely now to arise where there are intermediate trustees is where an undivided share in the proceeds of sale of land held on trust for sale is subject to a derivative settlement (*r*). In such a case neither the concurrence of the derivative trustees nor that of the persons beneficially interested under the derivative settlement will be necessary in a sale by the trustees for sale (*s*).

Treatise, p. 581. "Form of the conveyance." Enfranchised land.

Where "enfranchised land" (*t*) is sold together with other land, and the enfranchised land is still subject to "manorial

(*k*) L. P. Act, s. 1 (7), above, p. 98.
(*l*) L. P. Act, 1924, Ninth Schedule, para. 3, above, p. 5.
(*m*) L. P. Act, s. 28 (1), above, p. 171.
(*n*) *Ib.* s. 26 (1), above, p. 169.
(*o*) *Ib.* (2). As to trustees with power of sale, see above, p. 685.
(*p*) S. L. Act, s. 72, above, p. 326.
(*q*) L. P. Act, s. 2 (1) (iv), above, p. 204.
(*r*) See T. Act, s. 24, above, p. 367.
(*s*) L. P. Act, s. 27 (1), above, p. 170.
(*t*) See above, Part II., Chapter II.

incidents" (*t*), the purchaser could probably require the enfranchised land to be conveyed by a separate assurance, which could be produced to the steward of the manor for endorsement (*u*).

Since the commencement of the Property Act the estate of the vendor can never be outstanding in a mortgagee, because all legal mortgages must now take effect either as a term of years in the case of freeholds or as a sub-term in the case of leaseholds (*v*). Moreover, the regular mode of discharging a legal mortgage is by endorsing a receipt (*w*).

Treatise, p. 582. "Sale of lands subject to incumbrancers."

As we have seen (*x*), a stipulation contained in any contract for the sale or exchange of land made after the commencement of the Property Act, to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser, or that no objection is to be taken on account of an outstanding legal estate, is void.

Treatise, p. 583. "The usual stipulation as to the costs of conveyance."

Sect. 50 of the Property Act replaces, extends to exchanges, and slightly modifies sect. 5 (*y*) of the Conveyancing Act, 1881, as amended by sect. 1 (*y*) of the Conveyancing Act, 1911.

Treatise, p. 584. "Discharge of incumbrances on sale by payment into Court."

In view of the change in the law as to the estate conferred or deemed to be conferred by a legal mortgage and the maintenance of the legal estate of the mortgagor (*z*), no question can arise after the commencement of the Property Act of allowing a legal estate outstanding in a mortgagee to be reconveyed to the vendor before the completion of the purchase, or to be conveyed to a purchaser before he effects a new contemporaneous mortgage. These changes do not, however, affect any priorities or rights acquired before the commencement of that Act (*a*). Since such commencement there can rarely, if ever, be a legal estate outstanding in trustees which the vendor can require to have conveyed to him or as he shall direct, for trustees having a legal estate will usually be trustees for sale who will them-

Treatise, pp. 585, 586. "Vendor should never be allowed to obtain the legal estate."

Treatise, p. 587. "Purchase followed by an immediate mortgage."

(*t*) See above, Part II., Chapter II.
(*u*) L. P. Act, 1922, s. 129, above, p. 63.
(*v*) See above, p. 111.
(*w*) See L. P. Act, s. 115, above, p. 120.
(*x*) L. P. Act, s. 42 (3), above, p. 140.
(*y*) Repealed, above, p. 17.
(*z*) See above, p. 111.
(*a*) See L. P. Act, Schedule I., Part VII., paras. 6, 7; Part VIII., paras. 6, 8, above, pp. 112 *et seq.*

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Treatise, p. 587. Tacking.

selves be the only proper vendors. The right to tack, except as regards further advances by a mortgagee, is, as we have seen (*b*), abolished.

Treatise, p. 588. "Purchaser receiving notice of mesne incumbrances."

A mesne incumbrance affecting a legal estate will, if created after the commencement of the Land Charges Act, rank either as a "puisne mortgage," that is, a legal mortgage not protected by a deposit of documents relating to the legal estate affected, or as a "general equitable charge," that is, an equitable mortgage not so protected. In either case the incumbrance will be a land charge and will be void as against a purchaser of the land charged therewith, or of any interest in such land, unless registered in the appropriate register before the completion of the purchase (*c*); nor, unless it be so registered, will the purchaser be affected, even if he have express notice thereof (*d*). On the other hand, if and whilst it is so registered, the purchaser will be deemed to have actual notice thereof, whether he searches or not (*e*). The position will be the same in regard to puisne mortgages or general equitable charges registered before the commencement of the Land Charges Act, when the time allowed for their registration has expired (*f*).

Ib. p. 590. Purchase of an equity of redemption.

As we have seen (*g*), there can, since the commencement of the Property Act, be no "equity of redemption" in the sense in which that expression was used in applying the law as existing before such commencement.

Treatise, p. 590. Purchase of land in Yorkshire.

On a purchase of land in Yorkshire, requisition of an official search is the more indispensable having regard to the provisions of sects. 197 and 198 of the Property Act (*h*).

Treatise, p. 597 and n. (*x*). "Release by mortgagees from their security of *part* of the land mortgaged."

The enactments referred to in note (*x*) to this passage, namely, sect. 15 (*i*) of the Conveyancing Act, 1881, as amended by sect. 12 (*i*) of the Conveyancing Act, 1882, and sect. 16 (*i*)

(*b*) L. P. Act, s. 94, above, p. 127, as amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 555.
(*c*) L. C. Act, s. 10 (1), C (i) and (iii), above, p. 407; s. 13 (2), above, p. 406.
(*d*) L. P. Act, s. 199 (1) (i), above, p. 199.
(*e*) *Ib.* ss. 197, 198, above, pp. 200, 201.
(*f*) See L. C. Act, s. 14 (2), above, pp. 407, 408.
(*g*) Above, p. 672.
(*h*) Above, pp. 200, 201.
(*i*) Repealed, above, p. 17.

of the former Act, are replaced respectively by sects. 95 (*k*) and 96 (*l*) of the Property Act.

Treatise, p. 598. "By trustee-mortgagees."

It seems that a purchaser dealing in good faith with trustee-mortgagees, known to the purchaser to be such, who should be willing to, and should, release part of the mortgaged lands to the purchaser without any valuable consideration given to them, would be protected by sect. 113 of the Property Act (*m*).

Treatise, p. 599 and n. (*h*); p. 601 and n. (*m*). "General words."

Sect. 6 (*n*) of the Conveyancing Act, 1881, is re-enacted, with a slight variation, by sect. 62 of the Property Act (*o*).

Sect. 11 (*n*) of the Conveyancing Act, 1911, is re-enacted textually (*p*) by sect. 200 of the Property Act (*q*).

Treatise, p. 603. "Purchaser's right to require notice &c. to be indorsed."

Sect. 7 (1A) (*n*) of the Conveyancing Act, 1881, is re-enacted by sect. 76 (1) of the Property Act, and Part I. of the Second Schedule thereto (*r*).

Treatise, p. 605 and n. (*j*). "Where the property is sold subject to some incumbrance."

Sect. 63 (*n*) of the Conveyancing Act, 1881, is re-enacted by sect. 63 of the Property Act.

Treatise, p. 609. "Estate clause."

As we have seen (*s*), in a conveyance of freehold land executed after the commencement of the Property Act, words of limitation are not necessary to pass the fee simple, or otherwise, the whole interest of the grantor; but the operation of sect. 51 (*t*) of the Conveyancing Act, 1881, is saved.

Treatise, pp. 610, 611. "Limitation of the purchaser's estate"— "of the estate of a grantee to uses."

Since the repeal of the Statute of Uses (*u*) there cannot, of course, be a conveyance to a grantee to uses, and any attempt to create legal estates by means of uses will result, at the most, in the creation of corresponding equitable interests.

(*k*) Sub-sect. (4) of this section is new.
(*l*) Sub-sect. (2) of this section is new, and is amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 555.
(*m*) Above, p. 131.
(*n*) Repealed, above, p. 17.
(*o*) Above, p. 224.
(*p*) Except that sub-sect. (3) refers to "registered land," that is, of course, land registered under the L. R. Act. See above, Part VIII.
(*q*) Above, p. 201.
(*r*) See below, Section XIX.
(*s*) L. P. Act, s. 60, above, p. 104.
(*t*) Repealed, above, p. 17.
(*u*) Above, Part III., Chapter I., Section iii.

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Under the Settled Land Act, as we have seen (*v*), the trustees of a settlement cannot exercise a power of sale expressed to be conferred on them by the settlement.

Treatise, p. 615. "Sale under power."

As descent to the heir is abolished in the case of persons dying after the commencement of the Administration Act (*x*), the proviso limiting the implied covenants by a tenant for life will take the form of saving him from liability, as regards the remainder or reversion expectant on his life, for any other acts or defaults than those of himself or persons deriving title under him, or holding in trust for him or them or any of them.

Treatise, p. 615. "Proviso restricting tenant for life's liability under his covenants for title."

The force of the word *grant* in certain Acts of Parliament is expressly saved by sub-sect. (2) of sect. 59 (*y*) of the Property Act. That sub-section, re-enacting the like provision in sect. 4 of the Real Property Act, 1845, provides that the word "give" or "grant" does not, in a deed made after the 1st October, 1845, imply any covenant in law, save where otherwise provided by statute.

Treatise, p. 613 and n. (*k*). "No warranty of title now implied, as a rule, by the conveyance of land."

Sect. 7 of the Conveyancing Act, 1881, is repealed (*z*) and replaced by sect. 76 (*a*) of the Property Act. The new section in no way alters the effect of the statutory covenants or of express covenants or the law relating thereto, as respectively stated on these pages of the Treatise.

Treatise, pp. 617, 618. "The statutory covenants," &c.

Since the repeal of the Statute of Uses (*b*) there cannot, of course, be a conveyance to, or express or implied covenants for title with, a grantee to uses; and if, since such repeal, land should be expressed to be conveyed by A. "as beneficial owner" to B. to hold to B. in fee simple to certain uses, the implied covenants would be with B., and the estates purporting to be created by the uses would take effect, if at all, as corresponding equitable interests.

Treatise, p. 619. Grantee to uses.

As already pointed out (*c*), there can, since the commencement of the Property Act, be no "equity of redemption" in the sense of an equitable estate remaining in a mortgagor as

Treatise, p. 619. "Covenant for title on sale of an equitable estate."

(*v*) Above, p. 269.
(*x*) A. E. Act, s. 45, above, p. 449.
(*y*) Above, p. 224.
(*z*) Above, p. 17.
(*b*) Above, p. 103.
(*a*) See below, Section XIX.
(*c*) Above, p. 672.

the result of the divesting in favour of the mortgagee of the corresponding legal estate. Since such commencement all estates or interests in land not being "legal estates" (*d*) are classified and take effect as "equitable interests" (*d*). There seems no reason to doubt that, where the statutory covenants for title implied by sect. 76 (*e*) of the Property Act are given in the conveyance or sale of an equitable interest, *e.g.*, of an estate in fee simple in remainder, the benefit thereof will be annexed to and run with the interest conveyed, for such covenants are not limited to a conveyance of a "legal estate" (*d*).

Treatise, p. 621. "Covenants for title on sale of copyholds."

There can, of course, be no sale of copyholds since the enfranchisement of copyhold land by the Law of Property Act, 1922 (*f*). Attention has already been drawn to the provisions of the Property Act as to covenants "relating to land," and, in particular, where such covenants are "restrictive of the user of land" (*g*).

Treatise, p. 624. "Restrictions on the use of land."

Treatise, p. 627. "Sale of *part* of the land comprised in a lease."

Sect. 77 of the Property Act introduces a new set of covenants which, as varied or extended by deed, if so varied or extended (*i*), are to be implied in a "conveyance" (*k*) for valuable consideration, other than a mortgage, of land subject to a rent, where made after the commencement of that Act (*l*). This section is considered hereafter (*m*), but it may be mentioned that the section includes such a conveyance of *part* of the land comprised in a lease, subject to a *part* of the rent which has been or is by the conveyance apportioned (but in either case without the consent of the lessor (*n*)). In such a case there will be implied the respective covenants by the assignee and by the assignor, if expressed to convey as beneficial owner, set out in Part X. of the Second Schedule to the Act (*m*). To such a case the relevant provisions of sect. 190 (*o*) of the Property Act, so far as not expressly excluded by the conveyance, will also apply. As we have seen, the doubt expressed in note (*d*) to this passage of the Treatise, as to the validity, since the Bills of Sale Acts,

(*d*) L. P. Act, s. 1, above, Part III., Chapter I.
(*e*) Below, Section XIX.
(*f*) Above, Part II., Chapter II.
(*g*) L. P. Act, ss. 78 to 80, above, pp. 227 *et seq.*
(*i*) L. P. Act, s. 77 (6).
(*k*) Not including a demise by way of lease at a rent, *ib.* (3).
(*l*) *Ib.* (8).
(*m*) Below, Section XIX.
(*n*) L. P. Act, s. 77 (1) (D). (*o*) Above, p. 247.

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1878 and 1882, of cross powers of distress by way of indemnity is removed by sect. 189 (1) of the Property Act (*o*).

Treatise, p. 630. "Indemnity on sale of part of lands subject to a rentcharge."

The above-mentioned sect. 190 (*p*) of the Property Act contains provisions applicable where, in a conveyance for valuable consideration, other than a mortgage, of part of land affected by a rentcharge, such rentcharge or a part thereof is, without the consent of the owner thereof, apportioned between the land conveyed or any part thereof and the land retained by the grantor or any part thereof; and sect. 77 (*q*) of the Property Act introduces implied covenants applicable to such a case (*r*).

Treatise, p. 631. Rentcharge charged exclusively on some particular lot or lots.

Where in a conveyance on sale of part of land subject to a rentcharge, the rentcharge is, without the consent of the owner of the charge, expressed to be charged exclusively either on the land retained in exoneration of the land conveyed or on the land conveyed in exoneration of the land retained, the provisions of sect. 190 (*s*) of the Property Act will apply, and the owner for the time being of any other land affected by the entire rentcharge will have the remedies conferred by that section, if he pays or is required to pay the whole or part of the rentcharge or incurs any costs, damages or expenses by reason of the non-payment thereof by the owner of the land exclusively charged.

Treatise, pp. 631, 632 and n. (*b*). "Sale in consideration of a rentcharge." Ib. pp. 633 to 636. Remedies for securing a rentcharge.

Sect. 44 of the Conveyancing Act, 1881, is repealed (*t*) and replaced, with some modifications, by sect. 121 of the Property Act (*u*). Where the sale is by a tenant for life or by trustees for sale, the provisions of sub-sects. (2) to (4) of sect. 39 of the Settled Land Act (*v*) will apply. The effect of sect. 6 (*t*) of the Conveyancing Act, 1911, is re-enacted by sub-sects. (6) and (7) of sect. 121 of the Property Act.

Treatise, pp. 636 to 638. Powers of re-entry.

A power of re-entry can no longer be reserved by way of shifting use, and the law as to rights of re-entry affecting a legal estate which are exercisable on condition broken or for any

(*o*) Above, p. 245. (*p*) Above, p. 247.
(*q*) Below, Section XIX.
(*r*) L. P. Act, s. 77 (1) (B) and Part VIII. of Second Schedule. See below, Section XIX.
(*s*) Above, p. 247.
(*t*) Repealed, above, p. 17.
(*u*) Above, Part III., Chapter XIII.
(*v*) Above, p. 313; L. P. Act, s. 28 (1), above, p. 170.

other reason is now governed by sub-sect. (3) of sect. 4 of the Property Act (*w*).

Treatise, pp. 639, 670 and n. (*e*). "Delivery of the title deeds on completion."

The Vendor and Purchaser Act, 1874, is repealed (*x*), and rule 5 of sect. 2 of that Act is replaced by sub-sect. (9) of sect. 45 of the Property Act, which sub-section, as we have seen (*y*), alters the law by providing that a vendor is entitled to retain documents of title, not only where he retains any part of the land to which the documents relate, but also where the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust. This enactment apparently does not affect the decision in *Re Williams and Newcastle's Contract*, 1897, 2 Ch. 144, where the document in question was a mortgage and not a trust instrument; but, where land alone is settled on trust for sale and the trusts of the purchase-money are declared by the same deed, it will authorise the trustees to retain the deed of settlement on a sale of all the land, if after the sale any of the trusts affecting the purchase-money are still subsisting.

Treatise, pp. 643, 644 and n. (*e*). "What documents should be included in a statutory acknowledgment."

Sects. 62 and 64 of the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), are repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*z*), and, in regard to deaths occurring before the commencement of that Act, replaced by paragraph 2 of Part II. of the Fifth Schedule to that Act (*a*). Where the personal representative of a person who dies after the commencement of the Administration Act sells a legal estate in land forming part of the estate of the testator or intestate he should give an acknowledgment of the purchaser's right to production and delivery of copies of the probate or letters of administration to enable the purchaser to prove that no notice of a previous assent or conveyance affecting such legal estate has been placed on or annexed to the probate or letters of administration (*b*).

Treatise, pp. 645, 646 and n. (*k*). "Right to the possession of title deeds

Since the commencement of the Property Act the custody of title deeds relating to the entirety of lands held immediately

(*w*) Above, p. 196.
(*x*) L. P. Act, s. 207 and Seventh Schedule.
(*y*) Above, p. 138.
(*z*) Sect. 226 and Sixth Schedule.
(*a*) Above, p. 429.
(*b*) See above, p. 591.

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relating to the land of several owners."

before such commencement in undivided shares vested in possession or which, after such commencement, is expressed to be conveyed to persons in undivided shares will properly belong to the trustees in whom such entirety vests on trust for sale (*c*). The case of *Wright* v. *Robotham* cited in note (*k*) on p. 646 of the Treatise is reported in 33 (not 32) Ch. D. 106.

Treatise, pp. 646, 647 and nn. (*o*), (*q*), (*r*), (*x*). "Vendor must, as a rule, give both acknowledgment and undertaking."

Sect. 9 of the Conveyancing Act, 1881, is repealed (*d*) and re-enacted, sub-section by sub-section, by sect. 64 of the Property Act. The only difference in the *effect* of the new section is that in sub-sect. (4) (ii) "United Kingdom" means Great Britain and *Northern* Ireland (*e*).

Treatise, p. 651 and n. (*r*). "Expenses of acknowledgment and undertaking."

The Vendor and Purchaser Act, 1874, is repealed (*f*), and rule 4 of sect. 2 of that Act is re-enacted and expressly extended to acknowledgments and undertakings by sub-sect. (8) of sect. 45 of the Property Act (*g*).

Treatise, p. 651 and n. (*y*). "Endorsement of receipt."

Sect. 55 of the Conveyancing Act, 1881, is repealed (*h*) and re-enacted by sect. 68 of the Property Act.

Treatise, p. 653 and n. (*g*); p. 633 and n. (*d*); pp. 664 to 667. "Particulars Delivered stamp."

The obligations to deliver particulars of sales, and of leases or agreements for leases for over fourteen years, of land, and to stamp the instruments effecting them with a Particulars Delivered stamp, were abolished by the effect of sect. 38 of the Finance Act, 1923 (*i*).

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§ 4.—Of the Adjustment of Accounts.

Treatise, p. 669 and n. (*n*). "Taxes on land."

Inhabited house duty was abolished as from the end of the financial year 1923-24 by sect. 20 of the Finance Act, 1924.

Treatise, p. 685. "Costs of the sale." "Evidence of title."

As we have seen, evidence of title in the possession of the vendor's mortgagee or trustee is now placed on the same footing,

(*c*) See above, Part III., Chapter V.
(*d*) Above, p. 17.
(*e*) See Table of Definitions, above, Part I., Chapter VII.
(*f*) L. P. Act, s. 207 and Seventh Schedule. As to the enactment replacing sect. 9 of the C. Act, 1881, referred to in nn. (*s*) and (*t*) on this page of the Treatise, see above, p. 224.
(*g*) Above, p. 138.
(*h*) Above, p. 17.
(*i*) See the Addenda and Further Addenda on pp. xl. and xlv. of Volume II. of the Treatise.

as regards the expense of procuring and producing it, as evidence in the possession of the vendor (*k*).

Enrolment of a disentailing assurance is no longer necessary (*l*); and acknowledgments by married women are abolished (*m*).

Treatise, p. 686.
Tenant in tail.
Married woman.

§ 5.—Of the Execution of the Conveyance.

Sect. 8 of the Conveyancing Act, 1881, is repealed (*n*) and re-enacted by sect. 75 of the Property Act.

Sects. 8 and 9 of the Conveyancing Act, 1882, are repealed (*n*) and re-enacted respectively by sects. 126 and 127 of the Property Act (*o*).

Sect. 47 of the Conveyancing Act, 1881, is repealed (*n*) and re-enacted, with some modifications, by sub-sects. (1), (3) and (4) of sect. 124 of the Property Act. Sub-sect. (2) (*p*) of the last-mentioned section is new (*q*).

Sect. 48 of the Conveyancing Act is repealed and replaced by sect. 129 of the Supreme Court of Judicature (Consolidation) Act, 1925 (*r*). Where an instrument creating a power of attorney confers a power to dispose of or deal with any interest in or charge upon "land" (*s*) and is executed after the commencement of the Property Act, the provisions of sect. 125 of that Act (*t*) will apply.

Sect. 25 of the Trustee Act (*u*) enables a "trustee" (*s*) (including in that expression a "tenant for life" (*s*) or "statu-

Treatise, p. 688 and n. (*c*).
"Attestation of the conveyance by a witness of the purchaser's choosing."
Treatise, pp. 689 to 692.
"Powers of attorney when revoked."
Treatise, pp. 692 to 694 and n. (*d*).
"Execution of the conveyance by attorney."
Treatise, p. 693 and n. (*i*).
Filing at central office, &c.

Treatise, p. 694 and n. (*k*).
"Execution of Trusts (War Facilities) Acts."

(*k*) L. P. Act, s. 45 (4), above, p. 137.
(*l*) L. P. Act, s. 133, above, p. 187.
(*m*) L. P. Act, s. 167, below, Section XVI.
(*n*) Above, p. 17.
(*o*) As to the meaning of "purchaser" in the L. P. Act, see Table of Definitions, above, Part I., Chapter VII.
(*p*) Above, p. 216.
(*q*) This sub-section is set out, above, p. 216.
(*r*) Above, p. 18.
(*s*) See Table of Definitions, above, Part I., Chapter VII.
(*t*) Above, p. 216.
(*u*) Above, p. 367.

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tory owner" (*u*)), who is intending to remain out of the "United Kingdom" (*u*) for a period exceeding one month, to delegate to any person (including a "trust corporation" (*v*)) the execution or exercise during his absence from the United Kingdom of all or any trusts, powers and discretions vested in him as such trustee, either alone or jointly with any other person or persons.

Treatise, pp. 694 to 698. "To whom the purchase-money should be paid," &c.

Sect. 56 of the Conveyancing Act, 1881, is repealed (*w*) and re-enacted by sect. 69 of the Property Act. Sect. 17 of the Trustee Act, 1893, is repealed (*x*) and replaced by subsect. (3) of sect. 23 of the Trustee Act.

Treatise, p. 699. Sale of copyholds.

There can, of course, be no sale of copyholds since the commencement of the Law of Property Act, 1922 (*y*).

(*u*) See Table of Definitions, above, Part I., Chapter VII.
(*v*) See Table of Definitions, above, Part I., Chapter VII. See also L. P. Act, 1926, s. 3, above, p. 543.
(*w*) Above, p. 17.
(*x*) T. Act, s. 70 and Second Schedule.
(*y*) Above, Part II., Chapter II.

NOTE

ON APPENDICES A., B. AND C. TO VOLUME I. OF THE TREATISE.

In this note only such of the forms as appear to require modification or to be unnecessary are referred to.

Appendix A.

General Conditions of Sale.

P. 704. Condition 8. Party walls.

Having regard to the provisions of the Property Act as to party structures (*a*), the second part of this condition should, it is thought, be omitted, and it will be preferable to indicate in the particulars to which lot each wall or fence will be treated as belonging.

P. 705. Condition 15. Fire insurance.

At the end of this condition the following words should be added:—"Sect. 47 of the Law of Property Act, 1925 (*b*), shall not apply to this sale."

P. 707. Condition 20. Completion of the purchases.

In this condition the words "but such assurance" and the following words down to and inclusive of the words "requiring the same" should be omitted (*c*), and the following words should be substituted:—"Such assurance to be prepared by and at the expense of the purchaser"; and in the following words "every" should be omitted before "such assurance."

P. 708. Condition 21. As to the Particulars Delivered stamp.

As no Particulars Delivered stamp is now required (*d*), this condition should be omitted.

Special Conditions of Sale.

Pp. 710, 711. Condition 1. Title commencing with deed exercising power.

A tenant for life can no longer (*e*) sell subject to a prior interest, that is, an estate, interest, charge or power of charging, subsisting or capable of arising or of being exercised under a

(*a*) Above, p. 162.
(*b*) Above, p. 148.
(*c*) See L. P. Act, s. 42 (3), above, p. 140.
(*d*) See above, p. 706.
(*e*) Except as provided by L. P. Act, 1926, s. 1, above, p. 540.

Part IX. App. A.

settlement prior in date or operation to that under which the vendor is tenant for life; but, where there is a compound settlement, he must sell under *that* settlement, so as to be in a position to overreach any and every such prior interest (*f*). Moreover, on a sale by a tenant for life, the provisions of sub-sect. (2) of sect. 110 of the Settled Land Act will apply (*g*).

P. 711. Condition 2. Recitals to be conclusive evidence of facts and documents stated.

This condition may usefully be employed if made applicable to an instrument which is admissible as the root of title, *e.g.*, where there is a compound settlement, to the constituent instrument which is earliest in date or operation (*f*).

P. 711. Condition 3. Restriction of tenant for life's covenants for title.

Alterations in the form of restriction, consequent upon the abolition of descent to the heir, have already been suggested (*h*).

Pp. 712, 713. Condition 5. Indemnity against rent-charge issuing out of several lots.

For the reference in this condition to sect. 44 of the Conveyancing Act, 1881, must be substituted a reference to sect. 121 of the Law of Property Act, 1925.

P. 715. Condition 6 (4). Fences.

The references to party walls or fences to be held by the respective purchasers as tenants in common should be omitted (*i*).

P. 716. Condition 6 (8). Mutual obligation of conditions.

For "heirs and assigns" might be substituted "and their respective successors in title and the persons deriving title under him or them" (*k*).

P. 717. Condition 6 (10). Interpretation of "vendor."

It is suggested that "the vendor" might be defined as including, where the context so requires or admits "the estate owner for the time being of the hereditaments comprised in the said settlement."

P. 720. Condition 12. Completion as to lots in the county of London.

Having regard to the provisions of sect. 123 of the Registration Act (*l*), it is thought that, in regard to any lot or property situate in an area where registration is compulsory, the only stipulation necessary is that the purchaser shall on the completion of his purchase, at his own expense in all respects,

(*f*) Above, Part IV., Chapter II., pp. 260 *et seq.*
(*g*) Above, *ib.*, Chapter X., pp. 344 *et seq.*
(*h*) Above, p. 702.
(*i*) See above, p. 162.
(*k*) See L. P. Act, s. 79 (1), above, p. 229.
(*l*) Above, p. 535.

forthwith take all proceedings necessary to procure himself to be registered as proprietor thereof under the Land Registration Act, 1925, and complete such registration as soon as possible, and in any case not later than two months (*m*) after such completion, and produce the land certificate to the vendor as evidence that the stipulation has been complied with.

P. 721. Condition 15. Sale of equity of redemption.

As the mortgage will have been converted into a long term and the fee simple will have revested in the mortgagor or those deriving title under him at the date of such conversion (*n*), the second sentence of this condition should read: "The title shall commence with this indenture, and the purchaser shall be entitled only to a conveyance of the fee simple in possession subject to this mortgage."

Appendix B.

P. 726. Condition 5. Vendor to produce, &c.

This condition may be omitted in reliance on the changes in the law introduced by sect. 45 (4) of the Property Act (*o*).

Pp. 728, 729. Condition 10. Completion.

The law as stated in note (*o*) to this clause as to the meaning of *month* is altered (*p*).

P. 729. Condition 11. Particulars Delivered stamp.

This clause will be omitted (*q*), and there will be no necessity to execute the contract in triplicate as suggested in note (*q*) to this clause.

Appendix C.

P. 733. Inquiry 7.

In view of the provisions of the Property Act as to party structures (*r*), this inquiry should be to the following effect:—"Please state in regard to each boundary wall in whom the ownership is vested."

P. 733. Inquiry 11.

This inquiry should be omitted (*s*).

(*m*) "Month" now means calendar month; see L. P. Act, s. 61, above, p. 104.
(*n*) See L. P. Act, First Schedule, Part VII., above, p. 111.
(*o*) Above, p. 137.
(*p*) See L. P. Act, s. 61, above, p. 104.
(*q*) See above, p. 706.
(*r*) Above, p. 162.
(*s*) See above, p. 706.

SECTION XIII.

"Of Mistake" (*a*).

Treatise, Vol. II., Chap. XIII., pp. 739 to 788.

Rescission of contract.

References in this Chapter of the Treatise to cases in which a purchaser may successfully resist specific performance and yet not be entitled to rescind the contract (*b*), must be read subject to the power now given to the Court to order the return of any deposit, where the Court refuses to grant specific performance of a contract, or in any action for the return of a deposit (*c*).

Statute of Frauds.

References in this Chapter of the Treatise to sect. 4 of the Statute of Frauds (*d*), so far as it relates to contracts for the sale or other disposition of land, must be replaced by references to sect. 40 of the Property Act (*e*).

Treatise, p. 774 and n. (*e*).

Joinder of claims.

Sect. 24 (7) of the Judicature Act, 1873, is repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*f*), and replaced by sect. 43 of the latter Act.

Treatise, p. 777. *Craddock Bros., Ltd.* v. *Hunt.*

The decision in this case (*g*) has been approved by the Judicial Committee of the Privy Council in the case of *United States of America* v. *Motor Trucks, Ltd.* (*h*).

(*a*) See Explanatory Note, above, p. 562.
(*b*) See Treatise, pp. 760 and nn. (*c*), (*d*) and (*f*); 761, n. (*h*); 765 and n. (*e*).
(*c*) L. P. Act, s. 49 (2), above, Section I., p. 566.
(*d*) Treatise, pp. 771 and nn. (*m*) and (*o*), 773, 777.
(*e*) Above, Section I., p. 565.
(*f*) Sect. 226 and Sixth Schedule.
(*g*) See Further Addenda to pp. 770, 771; p. 777, nn. (*c*) and (*e*), Treatise, Vol. II., p. xlv.
(*h*) (1924) A. C. 196.

SECTION XIV.

OF FRAUD, MISREPRESENEATION, DURESS AND UNDUE INFLUENCE (*a*).

Treatise, Vol. II., pp. 789 to 831.

Rescission of contract.

References in this Chapter to cases where circumstances may enable a purchaser to resist specific performance of the contract and yet not confer upon him a right to rescind it (*b*) must be read subject to the power now given to the Court to order the return of any deposit, where the Court refuses to grant specific performance, or in any action for the return of a deposit (*c*).

Treatise, p. 812. "By what persons the right of rescission is exercisable."

Where a vendor, entitled at the time of his death to rescind a contract for the sale of land on the ground of misrepresentation, fraudulent or innocent, dies intestate after the commencement of the Administration Act (*d*), his right to rescind, as being an interest in real estate not ceasing on his death, will devolve upon his personal representative (*e*) and be subject to the provisions of sect. 33 of the Administration Act (*f*).

Treatise, p. 813. "Action of deceit maintainable after death of party deceived."

The statute 4 Edw. III. c. 7, and sect. 2 of the statute 3 & 4 Will. IV. c. 42 are, as regards deaths occurring after the commencement of the Administration Act, repealed (*g*) and replaced by sub-sects. (1), (2) and (5) of sect. 26 of that Act (*h*).

Treatise, pp. 829, 830 and n. (*d*).

The Sales of Reversions Act, 1867 (31 & 32 Vict. c. 4) is

(*a*) See Explanatory Note, above, p. 562.
(*b*) Treatise, pp. 807 and n. (*e*), 808 and nn. (*k*) and (*l*), 828 and n. (*t*).
(*c*) L. P. Act, s. 49 (2), above, Section I., p. 566.
(*d*) Above, p. 15.
(*e*) A. E. Act, ss. 1, 3, above, Part VII., Chapter II.
(*f*) Above, p. 441.
(*g*) A. E. Act, s. 56 and Part I. of Second Schedule, above, p. 16.
(*h*) See the Table, above, p. 425.

Part IX. Sect. XIV.

"Inadequacy of consideration," &c. L. P. Act, s. 174.

repealed (*i*) and replaced by the following section of the Property Act:—

Acquisitions of reversions at an under value.

174.—(1) No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in real or personal property, for money or money's worth, shall be liable to be opened or set aside merely on the ground of under value.

In this subsection "reversionary interest" includes an expectancy or possibility.

(2) This section does not affect the jurisdiction of the Court to set aside or modify unconscionable bargains.

Sub-sect. (2) of this section gives effect to the principle of the cases cited in note (*d*) to this passage.

(*i*) L. P. Act, s. 207 and Seventh Schedule.

SECTION XV.

OF ILLEGALITY IN THE CONTRACT (*a*).

Treatise, Vol. II., Chap. XV., pp. 832 to 844.

The special restrictions imposed on dealings with advowsons by the Benefices Act, 1898, are expressly saved by sect. 201 (2) of the Property Act (*b*).

Treatise, p. 833. "Sale by auction of an advowson alone."

Sect. 6 of the Real Property Act, 1845, is repealed (*c*) and replaced by sub-sect. (2) of sect. 4 of the Property Act (*d*). Sub-sect. (3) of the latter section relates to rights of entry affecting a legal estate which are exercisable for condition broken or for any other reason and has been already considered (*e*).

Treatise, p. 837 and n. (*x*). Right of entry.

Sect. 10 (*f*) of the Conveyancing Act, 1881, as amended by sect. 2 (*f*) of the Conveyancing Act, 1911, is re-enacted, with some amendments, by sect. 142 of the Property Act.

Right of entry in leases.

We have seen (*g*) that sect. 4 of the Statute of Frauds, so far as it relates to contracts in regard to land, is replaced by sect. 40 of the Property Act.

Treatise, p. 841. "Contracts unenforceable under the Statute of Frauds."

Attention has already been drawn to the changes effected by sect. 29 (4) of the Settled Land Act in regard to the formalities required for an assurance of land to charitable uses (*h*).

Treatise, p. 842. "Sale of land for the use of a charity."

(*a*) See Explanatory Note, above, p. 562.
(*b*) Above, p. 100; and see above, Section X., p. 663.
(*c*) L. P. Act, s. 207 and Seventh Schedule.
(*d*) Above, Part III., Chapter IX., p. 195.
(*e*) *Ib.*, pp. 196, 197.
(*f*) Repealed, above, p. 17.
(*g*) Above, Section I., p. 565.
(*h*) Above, Section X., p. 666.

SECTION XVI.

OF PERSONAL INCAPACITY.

Treatise, Vol. II., Chap. XVI., pp. 845 to 946.

§ 2.—Infants.

Treatise, pp. 846 to 848. "Infants."

Since 1925 infants cannot hold or acquire *legal* estate.

But capacity to hold or acquire beneficial interests unaffected.

Application of this passage.

Since the commencement of the Property and Settled Land Acts an infant cannot hold or acquire a *legal estate* in land (*a*), but his capacity to hold or acquire *beneficial interests* in land is unaffected by the new legislation (*b*). It is thought, therefore, that this passage of this section of Chapter XVI. of the Treatise will continue to apply, if it be limited to such equitable estates or interests in land as an infant is capable of holding. In this connection the expression "equitable estate" may conveniently be used to describe such a beneficial interest in land vested in an infant as, if he were of full age, would be a "legal estate," that is, an estate in fee simple absolute in possession or a term of years absolute (*c*); leaving the expression "equitable interest" to denote such an estate, interest or charge in or over land as, whether belonging beneficially to an infant or a person of full age, can take effect only as an "equitable interest" (*d*). Where the infant's interest is either an "equitable estate" or an "equitable interest" *in possession*, the land is settled land, and the legal estate must be vested in the "statutory owner" (*e*).

Settled land.

Treatise, p. 848 and n. (*m*).

Coupe v. *Overton*, 10 Bing. 292, was distinguished, and *Hamilton* v. *Vaughan-Sherrin, &c., Co.*, (1894) 3 Ch. 589, was overruled by the Court of Appeal in *Steinberg* v. *Scala* (*Leeds*), *Ltd.*, (1923) 2 Ch. 452 (*f*), where it was held that an infant

(*a*) See L. P. Act, s. 1 (6), above, p. 98; First Schedule, Part III., above, pp. 175 *et seq.*; sect. 19, above, p. 179; S. L. Act, s. 27, above, p. 257; Second Schedule, para. 3, above, pp. 293 *et seq.*; sect. 26, above, p. 253.

(*b*) See L. P. Act, s. 19 (5) (6), above, p. 179; S. L. Act, s. 26 (6), above, p. 254; sect. 27 (2), above, p. 257.

(*c*) L. P. Act, s. 1 (1), above, p. 97.

(*d*) *Ib.* (3) (8), above, p. 98.

(*e*) See above, Part IV., Chapter I., pp. 252 *et seq.*

(*f*) See Addenda, Treatise, Vol. II., p. xli.

who elects to avoid a contract cannot recover the money paid to obtain the contract, unless there is a total failure of consideration.

Treatise, p. 850. "1. Exercise of powers by an infant."

It is thought that there is nothing in any of the new Acts to alter the law as stated in this passage as to the exercise of powers by infants.

Treatise, p. 851. "2. Feoffment by an infant under the custom of gavelkind."

By sub-sect. (3) of sect. 128 of the Law of Property Act, 1922, modes of assurance by special custom are abolished, and all land (including land held in free tenure but subject to custom) is to be dealt with as land held in free and common socage discharged from custom. Moreover, sub-sect. (1) of sect. 51 of the Property Act (*g*) provides that all lands and all interests therein lie in grant and are incapable of being conveyed by livery or livery and seisin, or by feoffment, or by bargain and sale.

Treatise, p. 852. "3. Under the Infants Settlement Act."

The powers conferred by the Infants Settlement Act, 1855, are expressly saved, but not so as to enable a legal estate to be vested in an infant (*h*).

Treatise, p. 853 and nn. (*e*) to (*h*). "4. By statute in certain special cases."

The enactments referred to in note (*e*) to this passage, other than those of the Trustee Acts, 1893 and 1894, are repealed as regards deaths occurring after the commencement of the Administration Act (*i*), and superseded by sect. 38 of that Act. Sects. 26, 27 and 30 of the Trustee Act, 1893, are replaced by sects. 44, 45 and 47 of the Trustee Act (*k*). Sect. 1 of the Trustee Act, 1894, is not re-enacted (*k*). The Infants Property Act, 1830 (stat. 11 Geo. IV. and 1 Will. IV. c. 65), referred to in note (*f*) to this passage, is repealed (*l*) and not re-enacted, and, as we have seen (*m*), perpetually renewable leaseholds are converted into long terms. The enactments referred to in note (*g*) to this passage are not repealed, but are to a considerable extent superseded by the powers conferred on a "tenant for life" (*n*) by sect. 55 of the Settled Land Act (*o*).

(*g*) Above, p. 222. (*h*) S. L. Act, s. 27 (3), above, p. 257.
(*i*) A. E. Act, s. 56, above, p. 16.
(*k*) See Table, above, pp. 354, 355.
(*l*) L. P. Act, 1924, s. 10 and Tenth Schedule, above, pp. 4, 5.
(*m*) Above, Part II., Chapter IV.
(*n*) And, incidentally, on a "statutory owner."
(*o*) Above, p. 320.

Part IX. Sect. XVI.

Sect. 41 of the Conveyancing Act, 1881, is repealed (*p*) and not re-enacted, as is also the Settled Estates Act, 1877 (*q*).

Treatise, p. 853 and nn. (*i*) and (*k*). "Leases, sales and improvements of infants' land."

Treatise, pp. 853, 854. "Sale or lease of infants' land under the Settled Land Acts."

All the provisions of the Settled Land Act, 1882, which are referred to in this passage of the Treatise, are repealed (*r*) and superseded by sect. 26 of the Settled Land Act (*s*), which, where an infant is beneficially entitled in possession to land for an estate in fee simple or for a term of years absolute, or would, if of full age, be a tenant for life or have the powers of a tenant for life, confers on the "statutory owners," during the minority of the infant, all the powers, in reference to the settled land and capital money, conferred by the Settled Land Act and the settlement on a tenant for life and on the trustees of the settlement.

Treatise, pp. 858 to 861. "Completed sale of land by infant," &c.

This passage is obviously qualified by the consideration that, since the commencement of the Property Act, an infant is incapable of holding a legal estate (*t*). If, therefore, after such commencement, he contracts to sell and purports to convey a legal estate, there is no legal estate on which either the contract or the conveyance can operate. At most his equitable estate or equitable interest (*u*) would be bound, subject to his right to avoid the transaction on coming of age. If after such commencement an infant contracts to buy a legal estate and the vendor purports to convey it to him, the conveyance will operate only as an agreement for valuable consideration to execute a settlement by means of a principal vesting deed and a trust instrument in favour of the infant, and in the meantime to hold the land in trust for the infant (*v*).

Treatise, ib. and nn. (*d*) and (*g*).

The case of *Hamilton* v. *Vaughan-Sherrin, &c., Co.*, (1894) 3 Ch. 589, is overruled (*w*).

(*p*) Above, p. 17.
(*q*) S. L. Act, s. 119 and Fifth Schedule.
(*r*) Above, p. 18.
(*s*) Above, p. 253.
(*t*) L. P. Act, s. 1 (6), above, p. 98.
(*u*) See above, p. 516.
(*v*) S. L. Act, s. 27 (1), above, p. 257.
(*w*) See above, p. 516.

§ 3.—Lunatics and Drunken Persons.

In most of the Consolidation Acts (including the Property and Settled Land Acts) "lunatic" includes a lunatic whether so found or not, and, in relation to a lunatic not so found, "committee" includes a person on whom the powers of a committee are conferred under sect. 1 of the Lunacy Act, 1908 (*x*), and "defective" includes every person affected by the provisions of sect. 116 of the Lunacy Act, 1890 (*y*), as extended by sect. 64 of the Mental Deficiency Act, 1913, and for whose benefit a receiver has been appointed (*a*). Definitions.

The case of *Imperial Loan Co.* v. *Stone*, (1892) 1 Q. B. 599, was followed in *York Glass Co.* v. *Jubb*, 131 L. T. 559, affirmed on appeal, 42 T. L. R. 1, where the rule is stated to be that there is no right to avoid a contract made with a person of unsound mind, unless it is proved that the other party knew that he was of unsound mind or such other facts about him that the other party must be taken to have been aware that he was of unsound mind. In that case the action was for damages for breach of an agreement by T. J., a person of unsound mind, not so found by inquisition, to purchase the glass works of the plaintiff company. Hence the consideration was executory on both sides and consisted of mutual promises. Treatise, p. 861 and n. (*x*). "Persons of unsound mind."

Provision is now made for the conveyance by his "committee" (*a*) or receiver, under an order in lunacy or of the Court, or under any statutory power, of a "legal estate" (*a*) vested in a "lunatic" (*a*) or "defective" (*a*), either solely or jointly with any other person or persons (*b*). Treatise, pp. 863 to 865 and nn. (*x*) to (*z*). "Insane man's contract to buy or sell land," &c.

Where a "lunatic" (*a*) or "defective" (*a*) is a trustee for sale, a new trustee must be appointed in his place before the legal estate is dealt with under the trust for sale or under the powers vested in the trustees for sale (*c*). Treatise, p. 867. "Exercise of powers on behalf of lunatics."

(*x*) 8 Edw. 7, c. 47. See Treatise, p. 864, n. (*z*).
(*y*) See Treatise, Vol. I., p. 531, n. (*q*).
(*a*) See Table of Definitions, above, Part I., Chapter VII.
(*b*) L. P. Act, s. 22 (1), above, p. 221.
(*c*) *Ib.* (2).

Part IX. Sect. XVI.

Provision for the case where a tenant for life is a "lunatic" (*c*) or a "defective" (*c*) is made by the following section of the Settled Land Act (*d*):—

Treatise, p. 867.

"As to the power of sale under the Settled Land Act, 1882."

S. L. Act, s. 28.

Tenant for life lunatic.

28.—(1) Where a tenant for life is a lunatic (*e*) or a defective (*e*), his committee (*e*) or receiver may, in his name and on his behalf, under an order in lunacy exercise the powers of a tenant for life under this Act, and the order may be made on the application of any person interested in the settled land, or of the committee or receiver.

(2) Orders may be made under this section—

(a) either generally or in a particular instance;

(b) without requiring the estate of the lunatic or defective to be administered in lunacy;

(c) by appointing a receiver to act solely in relation to the settled land or in relation to particular settlement.

This section replaces sect. 62 of the Settled Land Act, 1882, which applied only to a lunatic, so found by inquisition. Under the new section the land may be sold in consideration of a rentcharge (*f*), or, on a sale to a company incorporated by special Act, for fully-paid securities of the company (*g*).

Treatise, p. 868 and n. (*e*).

Sale by trustees with consent of tenant for life.

As we have seen (*h*), the trustees of a settlement can no longer exercise a power of sale conferred on them by the settlement, but the power is to be deemed to be conferred on the tenant for life or statutory owner, and is exercisable only by him.

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§ 4.—Convicts and Outlaws.

Treatise, p. 869.

"Convicts."

The provisions of the Forfeiture Act, 1870, are expressly saved by the Property Act (*i*).

Treatise, p. 870 and n. (*a*).

Trust and mortgage estates of convict.

Sect. 48 of the Trustee Act, 1893 (stat. 56 & 57 Vict. c. 53) (*j*), is replaced by sect. 65 of the Trustee Act.

(*c*) See Table of Definitions, above, Part I., Chapter VII.

(*d*) Which Act, as we have seen, replaces the S. L. Acts, 1882 to 1890. See above, p. 18.

(*e*) See Table of Definitions, above, Part I., Chapter VII.

(*f*) See S. L. Act, s. 39 (2) to (4), above, p. 313. And see Treatise, p. 866 and n. (*o*).

(*g*) See S. L. Act, s. 39 (5), above, p. 314. And see Treatise, p. 866 and n. (*p*).

(*h*) Above, p. 269.

(*i*) L. P. Act, s. 7 (3), above, p. 219.

(*j*) Repealed. See above, p. 351.

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Escheat is abolished in the case of persons dying after the commencement of the Administration Act, and property of an intestate who leaves no successor belongs to the Crown or to the Duchy of Lancaster or to the Duke of Cornwall for the time being, as the case may be, as *bona vacantia* (*k*). There can now be no "copyhold estates of inheritance" (*l*).

Treatise, pp. 870, 871 and n. (*k*). "Outlaws."

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§ 5.—Aliens.

Treatise, p. 872. "Alien enemies."

By the Former Enemy Aliens (Disabilities Removal) Act, 1925 (*m*), certain disabilities on subjects, citizens and companies of former enemy countries in respect of the non-ferrous metal industry, service on board British ships registered in the United Kingdom, and the carrying on of banking business within the United Kingdom, were removed.

Treatise, pp. 876, 877 and n. (*k*). "The Treaty Charge."

The decision in *Re Rush*, (1923) 1 Ch. 56, has been reversed, *nom. Public Trustee* v. *Wolf*, (1923) A. C. 544 (*n*). The following further cases dealing with the question of nationality, as affecting liability to the charge, may be mentioned, namely, *Rothschild* v. *Administrator of Austrian Property*, (1923) 2 Ch. 542; *Kramer* v. *Att.-Gen.*, (1923) A. C. 528; *Hahn* v. *Public Trustee*, (1925) Ch. 715.

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§ 6.—Married Women.

Treatise, pp. 880, 881 and nn. (*i*), (*k*), (*l*), (*p*), (*u*). "Fines and Recoveries Act, 1833," &c.

The following (amongst other) sections or parts of sections of the Fines and Recoveries Act, 1833, namely, sect. 2, in sect. 77 the words from "save and except that no such disposition" to the end of that section, and sects. 79 and 90, and also sect. 184 of the County Courts Act, 1888 (stat. 51 & 52 Vict. c. 43), are repealed by the Law of Property (Amendment) Act, 1924 (*o*). The Conveyancing Act, 1882 (stat. 45 & 46 Vict.

(*k*) A. E. Act, s. 45 (1) (d), above, p. 450; s. 46 (1) (vi), above, p. 453.

(*l*) See above, Part II., Chapter II.

(*m*) 15 & 16 Geo. 5, c. 43. As to the date when this Act comes into operation, see sect. 2 (3).

(*n*) See Addenda, Treatise, Vol. II., p. xli, where the case of *Re Neuburger's Settlement*, (1923) 1 Ch. 508, is referred to.

(*o*) Sect. 10 and Tenth Schedule, above, pp. 4, 5.

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c. 39), is repealed (*p*). There can, of course, be no copyholds of a married woman since the commencement of the Law of Property Act, 1922 (*q*); but it may still be necessary to examine the copyhold title to "enfranchised land" (*q*) in which a married woman had or claimed an interest before such commencement.

Treatise, p. 880. Acknowledgments. L. P. Act, s. 167.

Acknowledgments by married women are abolished by the following section of the Property Act in the case of deeds executed after the commencement of that Act, and the same section also abolishes the necessity for the separate examination of a married woman as a preliminary to certain orders of the Court, when made after such commencement:—

Abolition of acknowledgments by married women. 3 & 4 Will. 4, c. 74. 20 & 21 Vict. c. 5.

167.—(1) Every disposition (including a disclaimer) of real or personal property or any interest therein which a married woman is under the Fines and Recoveries Act, 1833, or the Married Women's Reversionary Interests Act, 1857 (*r*), or any other enactment authorised to make by deed acknowledged in the manner prescribed by any such Act as amended by any subsequent enactment, shall, from the date of execution of the deed of disposition, be effectual if made by her with the concurrence of her husband, but without acknowledgment.

(2) The separate examination of a married woman shall not be necessary as a preliminary to any order of the Court directing payment or transfer of any money or property to her or in accordance with her directions.

(3) Where the Court, under any statutory power, dispenses in any case with the concurrence of the husband, and the Court is satisfied that the wife is entitled for her separate use to the property to be dealt with, the Court may by the order declare that the disposition shall have the same effect as if the husband had concurred therein and had disposed of his rights and interests, and the disposition by the wife alone shall take effect accordingly without acknowledgment.

(4) This section applies only to deeds executed and orders made after the commencement of this Act, and does not render necessary the concurrence of a husband in any deed where such concurrence would not have been requisite if this section had not been passed.

Treatise, p. 881 and n. (*e*). "Order dispensing with

In sect. 91 of the Fines and Recoveries Act, 1833, the words "or of making a surrender of lands held by copy of court roll" are repealed by the Law of Property (Amendment) Act,

(*p*) Above, p. 17.
(*q*) See above, Part II., Chapter II.
(*r*) The words "nor unless the deed be acknowledged by her as hereinafter directed" in sect. 1 and sect. 2 of this Act are repealed by the L. P. Act, 1924, s. 10 and Tenth Schedule, above, pp. 4, 5.

1924 (*s*). The rest of the section remains in force, and is "the statutory power" referred to in sub-sect. (3) of sect. 167 (*t*) of the Property Act. In this sub-section "the Court" means primarily the High Court, but includes any other Court having jurisdiction (*u*).

"the husband's concurrence in case of lunacy, &c."

Sects. 6 and 7 of the Real Property Act, 1845, are repealed (*v*). Sect. 6 is replaced by sect. 4 (2) of the Property Act (*w*), but without the restrictions imposed by the repealed section in regard to dispositions by married women. Sect. 7, which relates to disclaimers by married women, is superseded by sub-sect. (1) of sect. 167 of the Property Act (*x*).

Treatise, p. 882 and n. (*k*). "Wife's contingent interests, &c." "Disclaimer."

All estates tail are now classified as "entailed interests," and can take effect only as "equitable interests" (*y*). Since the commencement of the Married Women's Property Act, 1882, a disentailing deed by a married woman of an estate tail forming part of her separate estate does not require her husband's concurrence or to be acknowledged by her (*z*).

Treatise, p. 883 and n. (*u*). "Wife's equitable estate tail being her separate estate."

Sect. 7 of the Conveyancing Act, 1911, is repealed (*a*) and replaced by sect. 169 of the Property Act, which in no way alters the law.

Treatise, p. 884 and n. (*b*). "Removal of a restraint on anticipation."

The Matrimonial Causes Acts, 1857 to 1923 (which include the Acts of 1857 and 1858 referred to in this passage of the Treatise), are, with the exception of some few sections, repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*b*), and replaced by Part VIII. (sects. 176 to 200) of the latter Act, which for brevity will be referred to as "the Judicature Act, 1925." Thus sect. 25 of the Act of 1857 (stat. 20 & 21 Vict. c. 85) is repealed (*b*) and replaced by sub-sect. (1) (a) and proviso (ii) of sect. 194 of the Judicature Act, 1925; and sects. 7 and 8 of the Act of 1858 (stat. 21 & 22

Treatise, p. 885 and n. (*l*). "Judicial separation."

Treatise, p. 886 and n. (*u*). Protection order.

(*s*) Sect. 10 and Tenth Schedule, above, pp. 5, 6.
(*t*) Above, p. 722.
(*u*) See Table of Definitions, above, Part I., Chapter VII.
(*v*) L. P. Act, s. 207 and Seventh Schedule.
(*w*) Above, p. 195.
(*x*) Above, p. 722.
(*y*) See L. P. Act, s. 30, above, p. 181.
(*z*) See Treatise, p. 892, n. (*r*).
(*a*) Above, p. 17.
(*b*) 15 & 16 Geo. 5, c. 49, s. 226 and Sixth Schedule.

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Vict. c. 108) are repealed (*b*) and replaced, as regards the effect of a decree for judicial separation, by sub-sect. (2) of sect. 194 and sub-sect. (1) of sect. 195 of the Judicature Act, 1925. Sect. 21 of the Act of 1857 is repealed so far as it relates to the High Court (*b*), and sect. 9 of the Act of 1858 is repealed (*b*) and not re-enacted. The effect of these changes appears to be that an application for a protection order can no longer be made to the High Court.

Treatise, p. 886 and n. (*y*). "Separation order."

The Summary Jurisdiction (Married Women) Act, 1895, as extended by sect. 5 of the Licensing Act, 1902 (2 Edw. 7, c. 28), is further amended by the Married Women (Maintenance) Act, 1920, and the Summary Jurisdiction (Separation and Maintenance) Act, 1925.

Treatise, pp. 886 to 888 and nn. (*z*) and (*g*). "Effect of divorce."

All the enactments referred to in note (*z*) to this passage (*c*) are repealed (*d*). Of the sections of the Act of 1857 referred to in the same note, sect. 27, as amended by the Matrimonial Causes Act, 1923 (*e*), is replaced by sect. 176; sect. 28 by sect. 177; sects. 29 to 31 by sect. 178; and sect. 57 by sect. 184 (1) of the Judicature Act, 1925. Sect. 7 of the Matrimonial Causes Act, 1860 (stat. 23 & 24 Vict. c. 144), and sect. 3 of the Matrimonial Causes Act, 1866 (stat. 29 & 30 Vict. c. 32), are replaced by sects. 181 and 183 of the Judicature Act, 1925.

Matrimonial Causes Act, 1923.

The Matrimonial Causes Act, 1923 (*f*), introduced an important amendment in the law by enacting, in effect, that a married woman might petition for a dissolution of her marriage on the *sole* ground that her husband had since the marriage and since the date of the passing of that Act (*g*) been guilty of adultery. This amendment is incorporated in sect. 176 of the Judicature Act, 1925.

Variation of settlements.

Sect. 5 of the Matrimonial Causes Act, 1859 (stat. 22 & 23 Vict. c. 61) (*f*), as amended by sect. 3 of the Matrimonial Causes Act, 1878 (stat. 41 & 42 Vict. c. 19) (*f*), is re-enacted by sect. 192 of the Judicature Act, 1925.

(*b*) 15 & 16 Geo. 5, c. 49, s. 226 and Sixth Schedule.

(*c*) Except the stat. 25 & 26 Vict. c. 81, which merely made perpetual the stat. 23 & 24 Vict. c. 144.

(*d*) S. C. J. (Consolidation) Act, 1925, s. 226 and Sixth Schedule.

(*e*) Repealed, *ib.*

(*f*) Repealed, S. C. J. (Consolidation) Act, 1925, s. 226 and Sixth Schedule.

(*g*) The 18th July, 1923.

The Vendor and Purchaser Act, 1874, is repealed (*h*), as is also the Trustee Act, 1893 (*i*). Neither sect. 6 of the former nor sect. 16 of the latter Act is re-enacted.

Treatise, p. 889 and nn. (*t*) and (*u*). "Married woman bare trustee."

Part IV. (comprising sects. 45 to 52) of the Administration Act (*j*) relates to the "Distribution of Residuary Estate." Sub-sect. (1) of sect. 45 (*k*) enacts that, with regard to the "real estate" and "personal inheritance" of every person dying after the commencement of that Act, there shall be abolished (*inter alia*) tenancy by the curtesy and every other estate and interest of a husband in "real estate" as to which his wife dies intestate, whether arising under the general law or by custom or otherwise. It has been already suggested (*l*) that in this sub-section "real estate" is used in its strict sense as denoting real property which, on an intestacy occurring before the commencement of the Administration Act, might have devolved on an heir. If so, there appears to be nothing *in this sub-section* which affects a husband's right to his wife's undisposed-of personal property, including chattels real (*m*). On the other hand, the husband's rights in his wife's undisposed-of property, where she dies after the commencement of the Administration Act, appear to be conclusively determined by sect. 46 of that Act (*n*); and if, as has been supposed (*m*), the husband's right to his wife's undisposed-of personalty was derived under the statute 31 Edw. 3, st. 1, c. 11, that statute has been repealed (*o*).

Treatise, pp. 891, 892 and nn. (*p*) and (*q*). Separate property as to which married woman dies intestate.

Since the commencement of the Settled Land Act land limited to or in trust for a married woman of full age in possession for an estate in fee simple or a term of years absolute or any other interest with a restraint on anticipation is settled land (*p*), and the married woman is a person having the powers of a tenant for life of the land (*q*), with the result that she

Treatise, p. 892 and n. (*s*). "Restraint on anticipation."

Ib. "Sale without notice of a restraint on anticipation."

(*h*) L. P. Act, s. 207 and Seventh Schedule.
(*i*) Above, p. 352.
(*j*) Above, Part VII., Chapter V.
(*k*) Above, *ib.*, p. 449.
(*l*) Above, p. 450.
(*m*) See *In re Lambert's Estate,* 39 C. D. 626.
(*n*) Above, p. 450.
(*o*) A. E. Act, s. 56 and Second Schedule.
(*p*) S. L. Act, ss. 1 (1) (iv), 2, above, pp. 258, 259, 266.
(*q*) *Ib.* s. 20 (1) (x), above, p. 264.

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can only convey or create a legal estate in exercise of her powers as a "tenant for life" under the Settled Land Act (*r*).

Treatise, p. 893. "Rule that husband and wife are one person."

The rule that husband and wife are one person is now repealed (*s*), and every tenancy by entireties existing immediately before the commencement of the Property Act was, as from such commencement, but without prejudice to any beneficial interest, converted into a joint tenancy (*t*).

Treatise, pp. 895 to 897. "Amending Act of 1907."

L. P. Act, s. 170.

Sect. 1 of the Married Women's Property Act, 1907, is repealed (*u*), and the doubt referred to in this passage of the Treatise, and recognised by sect. 75 of the Law of Property Act, 1922 (*v*), is removed by the following section of the Property Act:—

Acquisitions and dispositions of trust estates by married women.

170.—(1) A married woman is able to acquire as well from her husband as from any other person, and hold, any interest in property real or personal either solely or jointly with any other person (whether or not including her husband) as a trustee or personal representative, in like manner as if she were a *feme sole;* and no interest in such property shall vest or be deemed to have vested in the husband by reason only of the acquisition by his wife.

(2) A married woman is able, without her husband, to dispose of, or to join in disposing of, any interest in real or personal property held by her solely or jointly with any other person (whether or not including her husband) as trustee or personal representative, in like manner as if she were a *feme sole.*

(3) This section applies to a woman married after the thirty-first day of December, eighteen hundred and eighty-two, and to a woman married before the first day of January, eighteen hundred and eighty-three, who became a trustee or personal representative on or after that date.

(4) This section operates to render valid and confirm all such acquisitions and dispositions made after the thirty-first day of December, eighteen hundred and eighty-two, whether before or after the commencement of this Act, but where any title or right has been acquired through or with the concurrence of the husband before the first day of January, nineteen hundred and eight, that title or right shall prevail

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(*r*) See S. L. Act, s. 13, above, p. 274, as amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 548; S. L. Act, s. 72, above, p. 326.
(*s*) L. P. Act, s. 37, above, p. 165.
(*t*) L. P. Act, First Schedule, Part VI., above, p. 164.
(*u*) L. P. Act, s. 207 and Seventh Schedule.
(*v*) See Treatise, p. 897, n. (*d*). This section is repealed by the L. P. Act, s. 207 and Seventh Schedule, and never came into operation.

over any title or right which would otherwise be rendered valid by this section or any enactment which it replaces.

(5) This section does not prejudicially affect any beneficial interest of the husband of any such woman.

Subs. (4).

The date, the 1st January, 1908, mentioned in sub-sect. (4), is the date of the commencement of the Married Women's Property Act, 1907 (*w*).

Treatise, p. 898. "Married women's powers under the Settled Land Acts."

The provisions, referred to in this passage, of the Settled Land Act, 1882, are repealed (*x*) and superseded by sect. 25 of the Settled Land Act (*y*).

Treatise, pp. 899, 900 and nn. (*y*), (*z*) and (*a*). "5. During judicial separation." "6. After protection or separation order."

As we have seen (*z*), sect. 25 of the Matrimonial Causes Act, 1857, is repealed and replaced by sub-sect. 1 (a) and proviso (ii) of sect. 194 of the Judicature Act, 1925, and sect. 21 of the former Act is repealed so far as it relates to the High Court. Sect. 26 of the Act of 1857 is repealed by the Judicature Act, 1925 (*a*), and replaced by sub-sect. (1) (b) of sect. 194 of the latter Act.

The words "and shall by such cruelty or neglect have caused her to leave and live separately and apart from him" in sect. 4 of the Summary Jurisdiction (Married Women) Act, 1895 (stat. 58 & 59 Vict. c. 39), are repealed by sect. 1 (1) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925.

Treatise, pp. 908, 909 and nn. (*x*) and (*f*). "Wife's liability for her fraud."

The appeals in the cases of *Edwards* v. *Porter* and *McNeall* v. *Hawes* were heard together by the Court of Appeal (*b*), which affirmed the judgment in the former case (*c*), and reversed that in the latter case (*d*), on the ground that in each case the wife's fraud was connected with a contract and the husband was not liable. In the case of *Edwards* v. *Porter* the facts were that a married woman, by fraudulently mis-

(*w*) See M. W. Property Act, 1907, s. 4 (2).
(*x*) Above, p. 18. For the decision in *Bates* v. *Kesterton*, cited in n. (*m*) to this passage, see above, p. 266 and n. (*r*).
(*y*) Above, p. 266.
(*z*) Above, p. 723.
(*a*) Sect. 226 and Sixth Schedule.
(*b*) (1923) 2 K. B. 538.
(*c*) (1923) 1 K. B. 268.
(*d*) (1923) 1 K. B. 273.

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representing that her husband wanted money to pay rates and do repairs to his house, induced certain persons to advance a sum of money, which she spent for her own purposes. The husband never authorised his wife to borrow the money or make the representation on his behalf. The action was by the lenders against the husband and wife for the fraud of the wife. On appeal to the House of Lords (*e*), Viscount Finlay, Lord Atkinson and Lord Sumner (Earl of Birkenhead and Viscount Cave dissenting) *held* (approving *Seroka* v. *Kottenburg*, 17 Q. B. D. 177, and *Earle* v. *Kingscote*, (1900) 2 Ch. 585, and disapproving the opinion of Fletcher Moulton, L. J., in *Cuenod* v. *Leslie*, (1909) 1 K. B. 880) that, notwithstanding the Married Women's Property Act, 1882, which provides that a married woman shall be capable of suing or being sued as if she were a *feme sole*, a husband is still liable to be sued with his wife for a tort committed by her during coverture, unless the tort is directly connected with a contract with her and is the means of effecting it. It was also *held*, affirming the decision of the Court of Appeal (*f*), that the husband was not liable; by Viscount Finlay, Lord Atkinson and Lord Sumner (applying *Liverpool Adelphi Loan Association* v. *Fairhurst*, 9 Ex. 422, and *Wright* v. *Leonard*, 11 C. B. (N. S.) 258) on the ground that the wife impliedly warranted that she had her husband's authority to borrow the money on his behalf, and therefore the fraud was connected with a contract; by Earl of Birkenhead and Viscount Cave on the ground that the Married Women's Property Act, 1882, had abrogated the common law rule as to the husband's liability for his wife's torts.

Treatise, p. 916.

"Corporation cannot stand seised to another's use, but may hold on trust."

§ 7.—Corporations.

As we have seen (*g*), the Statute of Uses is repealed; but this repeal does not, of course, affect the capacity of a corporation to hold a legal estate as a trustee.

Treatise, p. 917.

Colleges.

In the case of universities and colleges to which the Universities and College Estates Act, 1925, applies (*h*), their power

(*e*) *Edwards* v. *Porter*, (1925) A. C. 1.
(*f*) (1923) 2 K. B. 538.
(*g*) Above, Part III., Chapter I., Section iii.
(*h*) See above, p. 8, n. (*n*).

to dispose of their lands is governed by the provisions of that Act (*i*).

Treatise, p. 924. "Contract by a corporation for sale or purchase of land."

For the reference in this passage to the Statute of Frauds must be substituted a reference to sect. 40 of the Property Act (*k*).

Treatise, pp. 928 to 931. Assurances by corporations.

These passages must be read in connection with sect. 74 ("Execution of instruments by or on behalf of corporations") of the Property Act (*l*).

Treatise, pp. 932 to 934. "Dissolution of a corporation."

Sect. 181 of the Property Act provides that where, by reason of the dissolution of a corporation either before or after the commencement of that Act, a legal estate in any property has determined, the Court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate (*m*). This section certainly appears to support the view that, upon the dissolution of a corporation, the lands revert to the grantor or his representatives.

Treatise, p. 935. "Property vested in a corporation as trustee."

The Trustee Act, 1893, is repealed (*n*). The Court is now expressly empowered to appoint a new trustee in substitution for a corporation which has been dissolved (*o*), and to make orders vesting in any such person as the Court may direct trust property which was vested in a corporation which has been dissolved (*p*).

Treatise, pp. 942, 943. "Mortgages to building, friendly or industrial and provident societies." "Effect of receipt," &c.

All mortgages of freeholds now take effect as mortgages for a term of years, and all mortgages of leaseholds now take effect as mortgages for a sub-term less by one day at least than the term of the lease (*q*), or, in either case, as a charge by way of legal mortgage, and the legal estate, that is, the fee simple in the case of freeholds and the head term in the case of leaseholds, must be vested in the person who is for

(*i*) See above, p. 667.
(*k*) Above, p. 565.
(*l*) Above, p. 573.
(*m*) See also sub-sect. (2) of sect. 7 of the L. P. Act, and the words added at the end of sub-sect. (1) by the L. P. Act, 1926, s. 7 and Schedule, above, p. 552.
(*n*) Above, p. 352.
(*o*) T. Act, s. 41 (1), above, p. 382.
(*p*) *Ib.* s. 44 (ii) (c), above, p. 383; s. 51 (1) (ii) (c), above, p. 385.
(*q*) Above, Part III., Chapter III.

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the time being entitled to the estate or interest of the mortgagor (*q*). The mode of discharging a mortgage by means of an endorsed receipt is now made applicable to all mortgages by sect. 115 of the Property Act (*r*). The receipt operates to determine the term or merge it in the immediate reversion, or, where the mortgage does not take effect by demise or sub-demise, as a reconveyance thereof to the extent of the interest which is the subject-matter of the mortgage to the person who, immediately before the execution of the receipt, was entitled to the equity of redemption; and in either case, as a discharge of the mortgaged property from all principal money and interest secured by and from all claims under the mortgage (*s*). The provisions of this section relating to the operation of a receipt are substituted for the like statutory provisions relating to receipts given by or on behalf of a building, friendly, industrial or provident society, and apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society (*t*).

Treatise, p. 943. *Hosking* v. *Smith*.

The right to tack is now abolished, except as regards further advances made by a mortgagee (*u*). Hence no priority can now be obtained over a mesne incumbrance by getting in the legal estate. Moreover, under the present system, the legal estate of the mortgagor is never outstanding, but remains vested in the mortgagor or the persons deriving title under him concurrently with the legal term or sub-term, express or implied, of each or any mortgagee; and priority as between "puisne mortgages" is determined by the date of their registration as land charges (*v*). In some cases the receipt may operate as a transfer (*w*).

Receipt when operating as a transfer.

Treatise, p. 945. "Mortgages to friendly societies," &c.

Ib., p. 946. "Vesting of property," &c.

The provisions of the Friendly Societies Act, 1896, in regard to land to which that Act applies, and of any statute providing for the vesting of land in trustees, &c. are expressly saved by the Property Act (*x*).

(*q*) Above, Part III., Chapter III. (*r*) Above, *ib.* p. 120.
(*s*) L. P. Act, s. 115 (1), above, p. 120.
(*t*) *Ib.* sub-sect. (9).
(*u*) L. P. Act, s. 94, above, p. 127, as amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 555.
(*v*) Above, pp. 408 *et seq.*
(*w*) See L. P. Act, s. 115 (2) (3), above, pp. 120, 121.
(*x*) L. P. Act, s. 7 (3), above, p. 219.

SECTION XVII.

OF RELATIVE DISABILITY IN EQUITY (a).

Treatise, Vol. II., Chap. XVII. pp. 947 to 974

THE rule that a contract by a man with himself jointly with another or others is absolutely void as regards him is altered by sect. 82 of the Property Act (b), which provides, in effect, that such a contract shall be construed and be capable of being enforced as if the contract had been entered into with the other person or persons alone.

Treatise, p. 956. Contract by one with himself and others.

The provisions here referred to of Lord St. Leonards' Act are repealed (c), and those of the Land Transfer Act, 1897, are superseded (d), as regards deaths occurring after the commencement of the Administration Act.

Treatise, p. 958. "Executor or administrator."

The powers of a tenant for life to acquire the settled land or an interest therein for his own benefit or to sell land of his own to be made subject to the limitations of the settlement and other like dealings, are now governed by sect. 68 of the Settled Land Act (e).

Ib. Tenant for life.

As we have seen (f), the trustees of a settlement can no longer exercise a power of sale expressed to be conferred upon them by a settlement, and the tenant for life alone can sell.

Treatise, p. 959. "Trustees selling under a power of sale," &c.

The provisions of sect. 68 of the Settled Land Act, replacing (g) and extending those of sect. 12 of the Settled Land Act, 1890, have already been mentioned (h). The former section expressly authorises a lease of settled land to the tenant for life. The Settled Estates Act, 1877, is repealed (i).

Ib. "Sale, purchase, exchange or partition," &c.

Treatise, p. 960. "Power to lease land."

(a) See Explanatory Note, above, p. 562.
(b) Above, p. 231.
(c) Above, p. 587.
(d) Above, p. 432.
(e) Above, p. 256.
(f) Above, p. 269.
(g) Except, of course, the power to partition. See above, p. 158.
(h) Above, p. 256.
(i) S. L. Act, s. 119 and Fifth Schedule. As to the repeal of the Settled Land Acts, 1882 to 1890, see above, p. 18.

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Treatise, p. 970. "Tacking."

As we have seen (*j*), the right to tack is now abolished, except as provided in regard to further advances by a mortgagee.

Treatise, p. 971. "The legal estate may not always pass," &c.

Since the commencement of the Settled Land Act, the legal estate, which is the subject of the settlement, must always be vested in the tenant for life (*k*). It seems, therefore, that the legal estate would pass to the purchaser, even though the sale should be voidable as being at an undervalue to a nominee for the tenant for life; unless the tenant for life should have purported to convey before the execution of the requisite vesting instrument, in which case the legal estate would not pass except in favour of a purchaser of the legal estate without notice that the tenant for life had become entitled to have a vesting instrument executed in his favour (*l*).

(*j*) L. P. Act, s. 94, above, p. 127.
(*k*) See above, p. 252.
(*l*) See S. L. Act, s. 13, above, p. 274, as amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 548.

SECTION XVIII.

OF THE DISCHARGE OF THE CONTRACT (*a*).

Treatise, Vol. II., Chap. XVIII., pp. 975 to 1010.

§ 1.—OF THE DISCHARGE OF THE CONTRACT BEFORE BREACH, AND BY PERFORMANCE.

Treatise, p. 977.

On this page the concluding portion of the sentence beginning with the words "In equity, however, it was established" should read "and the *covenantor* would thereafter be relieved against any attempt by the *covenantee* to enforce the contract at law."

"Special contracts."

There is an addition to this passage and note on page xlvi of the Further Addenda in Vol. II. of the Treatise, where attention is drawn to the fact that § 1039 of Fry, Sp. Perf. was cited with approval by Lord Dunedin in *Morris* v. *Baron & Co.*, (1918) A. C. 1, 28, and some observations are made in regard to the case of *Rose and Frank Co.* v. *J. R. Crompton & Bros., Ltd.*, (1923) 2 K. B. 261. In *Morris* v. *Baron & Co.* it was held in the House of Lords that a contract for the sale of goods of more than 10*l.* in value, evidenced in writing as required by sect. 4 of the Sale of Goods Act, 1893, may be impliedly rescinded by a parol contract for the sale of goods, though unenforceable by reason of its non-compliance with that statute, where there is a clear intention to rescind as distinguished from an intention to vary; and in *Rose and Frank Co.* v. *J. R. Crompton & Bros., Ltd.*, on appeal to the House of Lords (*b*), it was held that the principle of *Morris* v. *Baron & Co.* applied, and that an arrangement declared to be merely an honourable understanding, though unenforceable as a contract, was intended and operated to supersede all previous arrangements or agreements, whether enforceable or unenforceable. It appears, therefore, that this passage of the Treatise

Treatise, pp. 978, 979 and n. (*r*).

"2. Implied waiver."

"A contract, invalid for want of writing, cannot be set up as an implied waiver of a prior contract."

(*a*) See Explanatory Note, above, p. 562.
(*b*) (1925) A. C. 445.

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requires some modification, and, in particular, that a new agreement, in order that it may operate as an implied waiver of a pre-existing contract, need not be, or even be intended to be, valid and enforceable.

Treatise, p. 979. "All *alterations* of a contract for sale of land must be put in writing and signed."

For the reference in this passage to the Statute of Frauds must be substituted a reference to sect. 40 of the Property Act (*c*).

Treatise, p. 993. "Vendor's lien on lands in Middlesex or Yorkshire."

A vendor's lien on the land sold for unpaid purchase-money appears to be a "general equitable charge" within the meaning of the Land Charges Act, at any rate, if the vendor should have parted with the title deeds, and, as such, a land charge of Class C (*d*). If so, where it affects land within any of "the three ridings" (*e*), it must be registered in the appropriate local deeds registry (*f*), and, where it affects land in Middlesex, it must be registered in the land registry (*g*), and it will be void as against a purchaser of the land charged therewith, or of any interest in such land, unless registered in the appropriate registry before the completion of the purchase (*h*).

Treatise, p. 993 and nn. (*d*), (*e*) and (*f*). "On land situate in a compulsory registration district."

The Land Transfer Acts, 1875 and 1897, and the rules made thereunder are repealed and replaced respectively by the Registration Act and the Land Registration Rules, 1925, except that some of the repealed rules are embodied in the text of the new Act (*i*). Of the rules referred to in note (*d*) to this passage, rule 8 is not re-enacted, and the rest are replaced respectively by rules 7, 160 to 166, and 40 of the new Rules. For the enactments replacing the enactments and rules referred to in note (*e*), reference should be made to the Table (*i*). Rule No. 27 of the Rules of 1908, referred to in note (*f*), is replaced by No. 28 of the new Rules.

Treatise, pp. 993, 994. "Against whom the

If it be the correct view that a vendor's lien is a "general equitable charge" (*k*), its registration as a land charge will

(*c*) Above, p. 565.
(*d*) Above, p. 407.
(*e*) Above, p. 415, n. (*x*).
(*f*) See the new sub-sect. (6) of sect. 10 of the L. C. Act, L. P. Act, 1926, s. 7 and Schedule, above, p. 559.
(*g*) L. C. Act, s. 18, above, p. 416.
(*h*) L. C. Act, s. 13 (2), above, p. 406.
(*i*) Above, Part VIII., Chapter I.
(*k*) See above.

operate as actual notice thereof to all persons and for all purposes connected with the land affected (*l*), whereas it will be void as against a purchaser of the land charged therewith or of any interest in such land, unless registered before the completion of the purchase (*m*), and such purchaser will be unaffected even if he have notice thereof *aliunde* (*n*).

vendor's lien is enforceable."

"Where the vendor has put it in the purchaser's power to dispose absolutely of the land." Treatise, p. 995.

Hence possession of the title deeds will not enable a purchaser to create either legal estates or equitable charges free from the vendor's lien, if the lien be duly registered. The effect of the possession or absence of possession of documents relating to a legal estate is expressly saved by the Property Act (*o*).

Possession of the title deeds.

(*l*) L. P. Act, s. 198, above, p. 201.
(*m*) See above, p. 734.
(*n*) L. P. Act, s. 199 (1) (i), above, p. 199.
(*o*) L. P. Act, s. 13, above, p. 220.

SECTION XIX.

OF THE REMEDIES FOR THE BREACH OF THE CONTRACT (*a*).

Treatise, Vol. II., Chap. XIX., pp. 1011 to 1111.

Treatise, p. 1011. "Remedies for breach of a contract to sell land." Return of deposit.

Passages in this Chapter of the Treatise (*b*), where attention is drawn to cases in which a vendor may be entitled to treat the contract for sale as enforceable at law, notwithstanding that he has been held not entitled to the equitable remedy of specific performance of the contract, or would not succeed if he brought an action claiming that remedy, must be read subject to the power now given to the Court to order the repayment of any deposit, where the Court refuses to grant specific performance of a contract, or in any action for the return of a deposit (*c*).

Statute of frauds.

References in this Chapter (*d*) to sect. 4 of the Statute of Frauds must be replaced by references to sect. 40 of the Property Act (*e*).

Treatise, p. 1021. "Title under a sale by a vendor reselling."

§ 1.—Of Rescission and Resale.

A contract for the sale of a legal estate in land is an "estate contract" which may be registered as a land charge under the Land Charges Act and will be void as against a purchaser for money or money's worth of a legal estate in the land charged therewith, unless registered in the appropriate register before the completion of the purchase (*f*). Such a purchaser, therefore, with notice that the vendor has entered into a prior contract for sale of the legal estate, will be unaffected by such notice if the prior contract was capable of being registered as a land

(*a*) See Explanatory Note, above, p. 562.
(*b*) See pp. 1036 and n. (*p*), 1037 and nn. (*u*) and (*y*), 1060 and n. (*t*), 1061, 1062, 1068, 1078 and n. (*n*), 1082.
(*c*) L. P. Act, s. 49 (2), above, p. 566.
(*d*) See pp. 1039, 1044, 1053, 1077.
(*e*) Above, p. 565.
(*f*) L. P. Act, ss. 10 (1), Class C (iv), 13 (2), 14 (2), above, pp. 406, 407.

charge and is not so registered before the completion of the purchase (*g*).

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§ 2.—Of Claiming Damages under the Contract.

Treatise, p. 1042 and n. (*u*). "Contract made by deed."

Sect. 5 of the Real Property Act, 1845 (stat. 8 & 9 Vict. c. 106) is repealed (*h*) and re-enacted, with some modifications, by sect. 56 of the Property Act (*i*).

Treatise, p. 1057 and n. (*p*). "Damages."

The Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49) is repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*k*).

Treatise, p. 1074 and n. (*m*). "Vesting order"

Sects. 26 to 28 and 30 to 33 of the Trustee Act, 1893, are replaced, with some modifications, by sects. 44 to 50 of the Trustee Act (*l*). The Supreme Court of Judicature Act, 1884 (stat. 47 and 48 Vict. c. 61), is repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*k*), sect. 14 of the former Act being replaced by sect. 47 of the latter Act.

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§ 4.—Of a Vendor and Purchaser Summons.

Treatise, pp. 1076 to 1083. Vendor and purchaser summons.

The Vendor and Purchaser Act, 1874, is repealed (*m*), and sect. 9 of that Act is replaced by sub-sect. (1) of sect. 49 of the Property Act (*n*). This is a purely formal change, and in no way affects the law as stated in this section of Chapter XIX. of the Treatise as to the jurisdiction of the Court or the rules and principles on which it acts in granting or withholding relief on a vendor and purchaser summons; but sub-sect. (2) of sect. 49 of the Property Act *does* effect a material alteration in the law by providing that, where the Court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the Court may, if it

(*g*) See L. P. Act, s. 199 (1), above, p. 199.
(*h*) L. P. Act, s. 207 and Seventh Schedule.
(*i*) Above, p. 223.
(*k*) Sect. 226 and Sixth Schedule.
(*l*) See the Table, above, Part V., Chapter I., p. 354, and *ib.*, Chapter VI., Section ii. Sects. 29 and 34 of the Trustee Act, 1893, are not re-enacted.
(*m*) L. P. Act, s. 207 and Seventh Schedule.
(*n*) Above, p. 566.

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thinks fit, order the repayment of any deposit (*o*). The new section applies to contracts for exchange as well as to contracts for sale of land (*p*).

Treatise, p. 1083. "Form of application."

The application must now be made by summons intituled in the matter of the agreement and in the matter of the Law of Property Act, 1925, and the body of the summons must specify the section (*q*) under which the application is made (*r*).

Treatise, p. 1083 and n. (*r*). "Appeals from orders on vendor and purchaser summons."

The Supreme Court of Judicature (Procedure) Act, 1894 (stat. 57 & 58 Vict. c. 16), is repealed by the Supreme Court of Judicature (Consolidation) Act, 1925 (*s*), and sect. 1 of the former Act is replaced by sect. 31 (1) (i) of the latter Act.

Treatise, p. 1087. Remedy on covenants. L. P. Act, s. 76.

§ 5.—Of the Purchaser's Remedies for Disturbance after Completion.

Sect. 7 of the Conveyancing Act, 1881, is repealed (*t*) and replaced by the following section of the Property Act:—

Covenants for title. [C. A. 1881, s. 7 (1).]

76.—[(1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is] (when the law permits) [made as tenants in common, that is to say:]

[Ib. (A).] [(A) In a conveyance for valuable consideration, other than a mortgage,] a [covenant by a person who conveys and is expressed to convey as beneficial owner] in the terms set out in Part I. of the Second Schedule to this Act;

[Ib. (B).] [(B) In a conveyance of leasehold property for valuable consideration, other than a mortgage,] a [further covenant by a person who conveys and is expressed to convey as beneficial owner]

(*o*) L. P. Act, s. 49 (2), above, p. 566.
(*p*) *Ib.* (3).
(*q*) That is, sect. 49.
(*r*) See Rules of the Supreme Court, 1883, Order LV., Rule 14a, introduced by R. S. C. (Law of Property and other Acts), 1925, r. 6.
(*s*) Sect. 226 and Sixth Schedule.
(*t*) Above, p. 17.

in the terms set out in Part II. of the Second Schedule to this Act;

[(c) In a conveyance by way of mortgage] (including a charge) a [covenant by a person who conveys] or charges [and is expressed to convey] or charge [as beneficial owner] in the terms set out in Part III. of the Second Schedule to this Act; [C. A. 1881, s. 7 (1) (c).]

[(d) In a conveyance by way of mortgage] (including a charge) of freehold property subject to a rent or [of leasehold property,] a [further covenant by a person who conveys] or charges [and is expressed to convey] or charge [as beneficial owner] in the terms set out in Part IV. of the Second Schedule to this Act; [Ib. (d).]

[(e) In a conveyance by way of settlement,] a [covenant by a person who conveys and is expressed to convey as settlor] in the terms set out in Part V. of the Second Schedule to this Act; [Ib. (e).]

[(f) In any conveyance,] a [covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic] or as receiver of a defective, [or under an order of the Court,] in the terms set out in Part VI. of the Second Schedule to this Act, [which covenant shall be deemed to extend to every such person's own acts only,] and may be implied in an assent by a personal representative in like manner as in a conveyance by deed. [Ib. (f).]

[(2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, for the purposes of this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.] [Ib. s. 7 (2).]

[(3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is expressed to convey as beneficial owner, then, for the purposes of this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.] [Ib. s. 7 (3).]

[(4) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic] or as receiver of a defective, [or under an order of the Court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.] [Ib. s. 7 (4).]

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[C. A. 1881, s. 7 (5).]

[(5) In this section a conveyance does not include a demise by way of lease at a rent,] but does include a charge and "convey" has a corresponding meaning.

[Ib. s. 7 (6).]

[(6) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.]

[Ib. s. 7 (7).]

[(7) A covenant implied as aforesaid may be varied or extended by a deed] or an assent, [and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.]

[Ib. s. 7 (8).]

[(8) This section applies to conveyances made after the thirty-first day of December, eighteen hundred and eighty-one,] but only to assents by a personal representative made after the commencement of this Act.

Changes effected by L. P. Act, s. 76.

This section differs from the repealed section (1) in that the covenants to be implied are placed in a schedule instead of in the text; (2) by limiting the implication of covenants in a conveyance to tenants in common to cases in which the law permits such a conveyance; (3) by expressly extending to a charge the covenants to be implied in a mortgage; (4) by extending to a mortgage of freehold property subject to a rent the covenants to be implied in a mortgage of leasehold property; (5) by implying a covenant on the part of a person who conveys and is expressed to convey as receiver of a defective; and (6) by placing an assent by a personal representative on the same footing as a conveyance by a personal representative.

L. P. Act, Second Schedule, Parts I. to VI.

The covenants set out respectively in Parts I. to VI. of the Second Schedule to the Property Act are identical with those set out respectively in paragraphs (A) to (F) of sub-sect. (1) of the repealed section; except (1) that at the end of Parts III. and IV. of the said Schedule there is inserted an enactment (printed in italics in the King's Printer's copy of the Act) that the above covenant in the case of a charge shall have effect as if for references to "conveys," "conveyed" and "conveyance" there were substituted respectively references to "charges," "charged" and "charge"; (2) that the covenant in Part IV. is extended to the case of a conveyance by way of mortgage of freehold property subject to a rent; and (3) that

at the end of Part VI. of the same Schedule is inserted an enactment (likewise so printed) that the foregoing covenant may be implied in an assent in like manner as in a conveyance by deed.

L. P. Act, s. 77.

Sect. 77 of the Property Act introduces an entirely new set of covenants which, in the several cases therein mentioned, are to be implied in "conveyances" (*u*) subject to "rents" (*u*), where such conveyances are made after the commencement of that Act.

Sect. 77 is as follows:—

Implied covenants in conveyances subject to rents (*v*).

77.—(1) In addition to the covenants implied under the last preceding section, there shall in the several cases in this section mentioned, be deemed to be included and implied, a covenant to the effect in this section stated, by and with such persons as are hereinafter mentioned, that is to say:—

(A) In a conveyance for valuable consideration, *other than a mortgage* of the *entirety* of the land affected by a rentcharge, a covenant by the grantee or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in Part VII. of the Second Schedule to this Act. Where a rentcharge has been apportioned in respect of any land, *with the consent of the owner of the rentcharge,* the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rentcharge were the rentcharge referred to, and the document creating the rentcharge related solely to that land:

(B) In a conveyance for valuable consideration, *other than a mortgage,* of *part* of land affected by a rentcharge, subject to a *part* of that rentcharge which has been or is by that conveyance apportioned (but in either case *without the consent of the owner of the rentcharge*) in respect of the land conveyed:—

(i) A covenant by the grantee of the land or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part VIII. of the Second Schedule to this Act;

(*u*) See Table of Definitions, above, Part I., Chapter VII.

(*v*) In this section, as here printed, the *italics* are by the writer and are not, of course, to be found in the King's Printer's copy of the Act.

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(ii) A covenant by a person who conveys *or* is expressed to convey *as beneficial owner,* or joint and several covenants by the persons who so convey *or* are expressed to so convey, *if at the date of the conveyance any part of the land affected by such rentcharge is retained,* with the grantees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part VIII. of the Second Schedule to this Act:

(c) In a conveyance for valuable consideration, *other than a mortgage,* of the *entirety* of the land comprised in a lease, *for the residue of the term or interest created by the lease,* a covenant by the assignee or joint and several covenants by the assignees (if more than one) with the conveying parties and with each of them (if more than one) in the terms set out in Part IX. of the Second Schedule to this Act. Where a rent has been apportioned in respect of any land, *with the consent of the lessor,* the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land:

(d) In a conveyance for valuable consideration, *other than a mortgage,* of *part* of the land comprised in a lease, *for the residue of the term or interest created by the lease,* subject to a *part* of the rent which has been or is by the conveyance apportioned (but in either case *without the consent of the lessor*) in respect of the land conveyed:—

(i) A covenant by the assignee of the land, or joint and several covenants by the assignees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part X. of the Second Schedule to this Act;

(ii) A covenant by a person who conveys *or* is expressed to convey *as beneficial owner,* or joint and several covenants by the persons who so convey *or* are expressed to so convey, *if at the date of the conveyance any part of the land comprised in the lease is retained,* with the assignees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part X. of the Second Schedule to this Act.

(2) Where in a conveyance for valuable consideration, *other than a mortgage, part* of land affected by a rentcharge, or *part* of land comprised in a lease is, *without the consent of the owner of the rentcharge or of the lessor,* as the case may be, expressed to be conveyed—

(i) *subject to or charged with the entire rent*—

then paragraph (b) (i) or (d) (i) of the last subsection, as the case may require, shall have effect as if the entire rent were the apportioned rent; or

(ii) *discharged or exonerated from the entire rent*—

then paragraph (B) (ii) or (D) (ii) of the last subsection, as the case may require, shall have effect as if the entire rent were the balance of the rent, and the words "other than the covenant to pay the entire rent" had been omitted.

(3) In this section "conveyance" does not include a demise by way of lease at a rent.

(4) Any covenant which would be implied under this section by reason of a person conveying *or* being expressed to convey as beneficial owner may, by express reference to this section, be implied, with or without variation, in a conveyance, whether or not for valuable consideration, by a person who conveys or is expressed to convey as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic, or as receiver of a defective, or under an order of the Court.

(5) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

(6) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.

(7) In particular any covenant implied under this section may be extended by providing that—

(a) the land conveyed; or

(b) the part of the land affected by the rentcharge which remains vested in the covenantor; or

(c) the part of the land demised which remains vested in the covenantor;

shall, as the case may require, stand charged with the payment of all money which may become payable under the implied covenant.

(8) This section applies only to conveyances made after the commencement of this Act.

L. P. Act, Second Schedule, Parts VII. to X.

It would occupy too much space to print here in full Parts VII. to X. of the Second Schedule to the Property Act, but, on reference thereto, it will be found that they embody covenants substantially identical with those which, in similar circumstances, would have been *expressed* in conveyances made before the commencement of the Act. For example, the covenant set out in Part IX. of the Schedule is identical with the *express* covenant invariably entered into by an assignee of the whole of the land comprised in a lease for the residue of the

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term thereby granted, where the assignment was made before the commencement of the Act.

Analysis of sect. 77.

The following points on sect. 77 should be noticed:—

(1) The section applies only to a conveyance (i) for valuable consideration, (ii) made after the commencement of the Act, and (iii) not being either by way of mortgage or a demise by way of lease at a rent.

(2) As regards leaseholds the section applies only to a conveyance by *assignment* (not sub-demise).

(3) Paragraphs (A) and (C) of sub-sect. 1 apply to a conveyance of the *entirety* of the land affected by the rent (*w*); except that, where the rent has been *legally* apportioned (*x*) in respect of the land conveyed, these paragraphs apply as if such land were the *entirety* of the lands affected by the rent and such rent were the *entire* rent.

(4) Paragraphs (B) and (D) of sub-sect. (1) apply to a conveyance of *part* of the land affected by the rent subject to a *part* of the rent which has been, or by the conveyance is, *equitably* apportioned (*y*), and should be compared with the provisions in regard to rents so apportioned of sect. 190 of the Property Act (*z*).

(5) Sub-sect. (2) applies where *part* of land affected by a rent, the rent not having been legally apportioned, is conveyed on the terms that the rent shall be *charged exclusively* (i) on the land conveyed, or (ii) on the land retained, and should be compared with the provisions, applicable in such cases, of sect. 190 of the Property Act (*z*).

(6) A covenant on the part of a grantor or assignor will be implied only where he retains part of the land affected by the rent and conveys *or* is expressed to convey as beneficial owner. The use of the disjunctive suggests that, if a grantor or assignor

(*w*) That is, the rentcharge or the rent reserved by the lease, as the case may be.

(*x*) That is, with the consent of the owner of the rentcharge or of the lessor, as the case may be. For the definitions of "lessor" and "lease," see Table of Definitions, above, Part I., Chapter VII.

(*y*) That is, without the consent of the owner of the rentcharge or of the lessor, as the case may be.

(*z*) Above, p. 247.

is *in fact* conveying as beneficial owner, he need not be *expressed* to be so conveying; but a purchaser should require him to convey *expressly* as beneficial owner, in any case where a covenant on the part of the grantor or assignor is capable of being implied by his so conveying.

(7) Sub-sect. (6) confers, in terms, power only to *vary* or *extend* an implied covenant; but it is thought that the parties must be able to *exclude* an implied covenant where they agree to do so.

SECTION XX.

OF THE SALE OF REGISTERED LAND.

Treatise, Vol. II., Chap. XX., pp. 1112 to 1288.

Treatise, p. 1112 and nn. (*a*), (*b*) and (*c*).

"Land registered under the Land Transfer Acts."

As we have seen (*a*), the Land Transfer Acts, 1875 and 1897 (hereinafter sometimes referred to respectively as the Act of 1875 and the Act of 1897), and the rules made thereunder are, with a few exceptions, repealed and replaced respectively by the Registration Act (hereinafter sometimes referred to as "the Act" or "the new Act"), and the Land Registration Rules, 1925 (hereinafter sometimes referred to as "the new Rules" or "the L. R. Rules"), except that certain of the repealed rules (*b*) are embodied in the text of the new Act.

The repealed enactments and the rules so embodied will be found in the first column, and the enactments, if any, by which they are replaced, in the second column of the Comparative Table in Chapter I. of Part VIII. of this volume (*c*). Of the enactments and rules mentioned in note (*c*) to this passage, those relating to the effect given to first registration and to registered transfers of registered land are replaced by sects. 5 to 7 (*d*), 9 to 12 (*e*), 20 and 23 (*f*) of the new Act, and those relating to charges are replaced by sects. 25 to 27 and 35 (*g*) of the new Act.

Treatise, pp. 1112, 1113 and nn. (*g*), (*h*), (*k*) and (*l*).

"Contracts to sell registered land."

In this passage for the references (1) to the Statute of Frauds, (2) to certain sections of the Act of 1897, and (3) to certain sections (*h*) of the Vendor and Purchaser Act, 1874, and the Conveyancing Act, 1881, must be substituted references respectively (1) to sect. 40 of the Property Act (*i*), (2) to

(*a*) Above, Part VIII., Chapter I.
(*b*) Namely, L. T. Rules, 1903, rr. 52, 53, 55 to 59, 65, 67 to 70, 140 to 143, and 251, and L. T. Rules, 1908, III. and IV.
(*c*) Above, pp. 460 *et seq.*
(*d*) Above, p. 477. (*e*) Above, p. 478.
(*f*) Above, pp. 485 *et seq.* (*g*) Above, pp. 489 *et seq.*
(*h*) Repealed, L. P. Act, s. 207 and Seventh Schedule.
(*i*) Above, Part IX., Section I.

sect. 110, stated below, of the new Act, and (3) to the "statutory conditions of sale" contained in the Property Act (*k*). Express provision is made in the new Act enabling the proprietor of any registered land or charge to enter into a contract in reference thereto in like manner as if the land or charge had not been registered, and for the enforcement of any such contract by or against the proprietor for the time being (*l*).

Treatise, pp. 1113 to 1116.

The express enactments of the Act of 1897, which are set out on these pages, are superseded by sect. 110 of the Registration Act. That section is as follows:—

"Proof of title," &c.

L. R. Act, s. 110.

110. [On a sale] or other disposition [of registered land to a purchaser] (*m*) other than a lessee or chargee—

Provisions as between vendor and purchaser.

(1) The vendor shall, notwithstanding any stipulation to the contrary, at his own expense furnish the purchaser with an authority to inspect the register, and, if required, with a copy of the subsisting entries in the register and of any filed plans and copies or abstracts of any documents or any part thereof noted on the register so far as they respectively affect the land to be dealt with (except charges or incumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion):

[L. T. Act, 1897, s. 16 (1).]

Provided that—

(a) unless the purchase money exceeds one thousand pounds the costs of the copies and abstracts of the said entries plans and documents shall, in the absence of any stipulation to the contrary, be borne by the purchaser requiring the same;

(b) nothing in this section shall give a purchaser a right to a copy or abstract of a settlement filed at the registry:

(2) [The vendor shall,] subject to any stipulation to the contrary, at his own expense [furnish the purchaser with such] copies, abstracts and [evidence] (if any) in respect of any subsisting rights and interests appurtenant to the registered land as to which the register is not conclusive, and [of any matters excepted from the effect of registration as the purchaser would have been entitled to if the land had not been registered:]

[L. T. Act, 1897, s. 16 (1), (iv), (v).]

(*k*) Above, Part III., Chapter IV.; and see the Table on pp. 133 and 134.

(*l*) L. R. Act, s. 107, above, p. 529.

(*m*) For the definition of "purchaser" in the L. R. Act, see Table of Definitions, above, Part I., Chapter VII. A lessee is excluded, because he is not entitled to call for the lessor's title (see L. P. Act, s. 44 (2), (4), above, Part III., Chapter IV., p. 134); and a chargee, because he can make his own terms as to the title to be shown.

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[L. T. Act, 1897, 16 (1).]

(3) [Except as aforesaid,] and notwithstanding any stipulation to the contrary, [it shall not be necessary for the vendor to furnish the purchaser with any] abstract or other written [evidence of title,] or any copy or abstract of the land certificate, or of any charge certificate:

(4) Where the register refers to a filed abstract or copy of or extract from a deed or other document such abstract or extract shall as between vendor and purchaser be assumed to be correct, and to contain all material portions of the original, and no person dealing with any registered land or charge shall have a right to require production of the original, or be affected in any way by any provisions of the said document other than those appearing in such abstract, copy or extract, and any person suffering loss by reason of any error or omission in such abstract, copy or extract shall be entitled to be indemnified under this Act:

Ib. s. 16 (2).

(5) [Where the vendor is not himself registered as proprietor of the land or the charge giving a power of sale over the land, he shall, at the request of the purchaser and at his own expense, and notwithstanding any stipulation to the contrary, either procure the registration of himself as proprietor of the land or of the charge, as the case may be, or procure a disposition from the proprietor to the purchaser:]

[Ib. s. 8 (2).]

(6) Unless the certificate is deposited at the registry [the vendor shall deliver the land certificate,] or the charge certificate, as the case may be, [to the purchaser on completion of the purchase, or, if only a part of the land comprised in the certificate is dealt with,] or only a derivative estate is created, [he shall, at his own expense, produce, or procure the production of, the certificate in accordance with this Act for the completion of the purchaser's registration. Where the certificate has been lost or destroyed, the vendor shall,] notwithstanding any stipulation to the contrary, [pay the costs of the proceedings required to enable the registrar to proceed without it]:

(7) The purchaser shall not, by reason of the registration, be affected with notice of any pending action, writ, order, deed of arrangement or land charge (other than a local land charge) to which this sub-section applies, which can be protected under this Act by lodging or registering a creditors' notice, restriction, inhibition, caution or other notice, or be concerned to make any search therefor if and so far as they affect registered land.

This sub-section applies only to pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, either under the Land Charges Act, 1925, or any other statute registration whereunder has effect as if made under that Act.

Evidence of title on sale of registered land.

1. The register. L. R. Act, s. 110 (1).

Under sub-sect. (1) of sect. 110 of the new Act, as under paragraph (i) of sub-sect. (1) of sect. 16 of the Act of 1897, the *primary* evidence of the vendor's title will be the register. The provision that the vendor shall, *notwithstanding any stipulation to the contrary*, at his own expense furnish the purchaser with an authority to inspect the register is new. *Secondly*, the vendor must, *if required and notwithstanding any stipulation to the contrary*, at his own expense (*n*), furnish the purchaser with (1) a copy of the subsisting entries in the register and of any filed plans, and (2) copies or abstracts of any documents (except as mentioned in the sub-section) or any parts thereof noted on the register so far as they respectively affect the land to be dealt with. The exception (*o*) is of documents creating charges or incumbrances registered or protected (*p*) on the register which are to be discharged or overridden (*q*) at or before completion. Paragraph (iii) of sub-sect. (1) of sect. 16 of the Act of 1897 provided that, if the proprietor of the land was registered with an *absolute* title, and there were incumbrances entered on the register as subsisting at the first registration of the land, the purchaser should be entitled either to evidence of the title to those incumbrances or to evidence of their discharge. The effect of the exception in the new sub-section appears to be that, whether the title be absolute, possessory, qualified or good leasehold, and whatever be the nature of the charges or incumbrances, and whether created before or after first registration, the purchaser, if they are to be discharged or overridden at or before completion, is not concerned with the title to them, but only to see that they are cleared off the register, and all necessary steps for this purpose must be taken by and at the expense of the vendor. *Thirdly*, the vendor must, *subject to any stipulation to the*

2. Copies and abstracts.

Except of charges, &c. to be discharged, &c.

3. Evidence outside the register.

(*n*) Except as provided by proviso (a) to sub-sect. (1) of sect. 110, above, p. 747.

(*o*) The exception in proviso (b) of a right to a copy or abstract of a settlement filed at the registry is considered hereafter in connection with the subject of "Purchase of registered land which is settled," below, p. 771.

(*p*) "Protected" apparently refers to charges or incumbrances, *e.g.*, charges or incumbrances created prior to first registration, which are noted on the register but of which the holder is not registered as the proprietor. See L. R. Rules, 160.

(*q*) Where a prior registered chargee sells under his statutory power of sale, subsequent registered charges will be overridden and cancelled. See L. R. Act, s. 34 (4), above, p. 491.

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L. R. Act, s. 110 (2)

contrary, at his own expense furnish the purchaser with such copies, abstracts and evidence (if any) as the purchaser would have been entitled to if the land had not been registered in respect (i) of any subsisting appurtenant rights as to which the register is not conclusive, and (ii) of any matters excepted from the effect of registration. As regards (i), on the first registration of land and on a registered transfer of registered land for valuable consideration there vest in the proprietor along with the registered estate, in the case of freehold land, "all rights, privileges and appurtenances belonging or appurtenant thereto" (*q*); and, in the case of leasehold land, "all implied or expressed rights, privileges and appurtenances attached to the leasehold interest" (*r*). Such appurtenant rights attach without express mention in the register; but, where capable of subsisting as legal estates (*s*), they may be entered on the register (*t*). The meaning of requirement (i) as to evidence of title appears to be that, where a vendor claims to be entitled to some appurtenant right, which is expressly included in the sale but is not entered on the register, he must, unless the contract otherwise provides, prove his title thereto in the same way as if the land were not registered. As regards (ii), "the matters excepted from the effect of registration" are as follows: The registration of any person as first proprietor of land with a *possessory* title does not affect or prejudice the enforcement of any estate, right or interest adverse to or in derogation of the title of the first proprietor, and subsisting or capable of arising at the time of the registration of that proprietor (*u*); with a *qualified* title, does not affect or prejudice the enforcement of any estate, right or interest appearing by the register to be excepted (*v*); and with a *good leasehold* title, does not affect or prejudice the enforcement of any estate, right or interest affecting or in derogation of the title of the lessor to grant the lease (*w*).

(i) Appurtenances.

ii. Matters excepted from the effect of registration.

(*q*) L. R. Act, s. 5, above, p. 477; s. 20, above, p. 485. See also s. 72, above, p. 510.

(*r*) *Ib.*, s. 9, above, p. 478; s. 23, referred to above, p. 486. See also s. 72, above, p. 510.

(*s*) See L. P. Act, s. 1 (2) (a), above, p. 98.

(*t*) See L. R. Rules, 251 to 258.

(*u*) L. R. Act, s. 6, above, p. 477; s. 11, above, p. 478.

(*v*) *Ib.*, s. 7, above, p. 477; s. 12, above, p. 478.

(*w*) *Ib.*, s. 10, above, p. 478. On the sale of leasehold registered land the purchaser will not, in any case, be entitled to investigate the lessor's title unless the contract otherwise provides. See L. P. Act, s. 44 (2), (3), (11), above, pp. 134, 135.

Do they include "overriding interests?"

Paragraph (ii) of sub-sect. (1) of sect. 16 of the Act of 1897 entitled a purchaser to require a statutory declaration as to the existence or otherwise of matters which, by sect. 18 of the Act of 1875, as amended by the First Schedule to the Act of 1897 (*x*), are declared not to be incumbrances. The new Act contains no provision which, in terms, requires a vendor to prove, whether by statutory declaration or otherwise, the existence or otherwise of "overriding interests," which, as enumerated in sect. 70 of the Act (*y*), take the place, with some modifications, of the "matters declared not to be incumbrances." It is thought, however, that a purchaser must be entitled to require evidence as to the existence or otherwise of such overriding interests as may possibly affect the land contracted to be sold. For example, overriding interests include land tax (*z*), tithe rentcharge (*z*), easements (*a*) and tenancies (*b*), and it has been the regular practice to inquire as to the existence or otherwise of such matters as these. Moreover, overriding interests include, in the case of a possessory, qualified or good leasehold title, all estates, rights, interests, and powers excepted from the effect of registration (*c*), being matters in respect of which a purchaser is expressly entitled to evidence. Inasmuch, then, as first registration always takes effect, "unless the contrary is expressed on the register, subject to such overriding interests, if any, as affect the registered land" (*d*), it may be that the expression "matters excepted from the effect of registration" in sub-sect. (2) of sect. 110 of the Act ought to be construed as including overriding interests.

Subs. (7). Pending actions, &c.

The requirements of the Land Charges Act as to the registration or re-registration after the commencement of the Regis-

(*x*) And, as so amended, set out in note (*o*) on p. 1113 of the Treatise. Rules 212 to 215, referred to in this note, of the L. T. Rules, 1903, are replaced by L. R. Rules, 194 to 197. Rule 197 enables an entry to be made of the freedom from, as well as the existence of, an overriding interest.

(*y*) Above, p. 468.

(*z*) L. R. Act, s. 70 (1) (e), above, p. 468.

(*a*) Not being equitable easements required to be protected by notice on the register: *ib.*, s. 70 (1) (k).

(*b*) That is, leases for any term or interest not exceeding twenty-one years granted at a rent without taking a fine: *ib.*, s. 70 (1) (k). In the L. R. Act "lease" includes an underlease and any tenancy or agreement for a lease, underlease or tenancy: s. 3 (x).

(*c*) L. R. Act, s. 70 (1) (h), above, p. 468.

(*d*) *Ib.*, ss. 5, 9, above, pp. 477, 478.

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tration Act (*e*), either under the Land Charges Act or any other statute (*f*) registration whereunder has effect as if made under the latter Act, of pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) have already been considered (*g*); as have also the provisions of the Registration Act for the protection of any such pending action, writ, order, deed of arrangement or land charge (*h*).

Protection of purchasers. L. R. Act, s. 59 (6).

Sub-sect. (6) of sect. 59 (*i*) of the Registration Act provides that, subject to the provisions of that Act relating to fraud (*k*) and to the title of a trustee in bankruptcy (*l*), a purchaser acquiring title under a registered disposition shall not be concerned with any pending action, writ, order, deed of arrangement, *or other document, matter, or claim* (not being an overriding interest) which is not protected by a caution or other entry on the register, *whether he has or has not notice thereof, express, implied, or constructive*. In this connection it should be noticed that "overriding interests" include "rights under local land charges unless and until registered or protected on the register in the prescribed manner" (*m*). It is provided (*n*) that, before a land charge including a local land charge affecting registered land (being a charge to secure money) is realised, it shall be registered and take effect as a registered charge under the Registration Act in the prescribed manner (*o*), without prejudice to the priority conferred by the land charge. This provision does not, of course, make it unnecessary for the purchaser to search for local land charges.

Local land charges.

Land charges when to be registered as *charges*.

Search for local land charges.

Treatise, p. 1115. "As to covenants for title."

Sub-sect. (3) of sect. 16 of the Land Transfer Act, 1897, is not re-enacted. Sect. 7 (*p*) of the Conveyancing Act, 1881,

(*e*) As to the commencement of the L. R. Act and the L. C. Act, see above, p. 8.

(*f*) *E.g.*, the Companies (Consolidation) Act, 1908; see L. C. Act, s. 10 (5), above, p. 417. As to notice of incumbrances registered under the Companies Act, where a company, registered under that Act, is registered as proprietor of any estate or charge already registered, see L. R. Act, s. 60, above, p. 505.

(*g*) Above, Part VI.

(*h*) Above, Part VIII., Chapter V., Section vi.

(*i*) Above, p. 504.

(*k*) L. R. Act, s. 114, below, p. 763.

(*l*) *Ib.*, s. 61 (6), above, p. 506.

(*m*) *Ib.*, s. 70 (1) (i), above, p. 468.

(*n*) *Ib.*, s. 59 (2), above, p. 504.

(*o*) See L. R. Rules, 155.

(*p*) Repealed, above, p. 17.

is replaced by sect. 76 of the Property Act (*q*), and sect. 77 of that Act (*q*) introduces a new set of implied covenants applicable to conveyances subject to rents.

Rules 76 and 77 of the new Rules provide as follows:— L. R. Rules 76 and 77.

76. [For the purpose of introducing the covenants implied under] sections 76 and 77 of the Law of Property Act, 1925, [a person may, in a registered disposition, be expressed to execute, transfer, or charge as beneficial owner, as settlor, as trustee, as mortgagee, as personal representative of a deceased person, as committee of a lunatic,] or as receiver of a defective, [or under an order of the Court: and an instrument of transfer or charge, and any instrument affecting registered land, or a registered charge, may be expressed accordingly, but no reference to covenants implied] under section 76 aforesaid [shall be entered in the register.] Implied covenants. [L. R. Rules 1903, r. 99.]

77. Pursuant to sub-section (2) of section 38 (*r*) of the Act, it is hereby provided that— Special provisions as to implied covenants.

(1) Any covenant implied by virtue of section 76 of the Law of Property Act, 1925, in a disposition of registered land shall take effect as though the disposition was expressly made subject to—

(a) all charges and other interests appearing or protected on the register at the time of the execution of the disposition and affecting the title of the covenantor;

(b) any overriding interests of which the purchaser has notice and subject to which it would have taken effect, had the land been unregistered; and

(2) The benefit of any covenant implied under sections 76 and 77 aforesaid, or either of them shall, on and after the registration of the disposition in which it is implied, be annexed and incident to and shall go with the registered proprietorship of the interest for the benefit of which it is given and shall be capable of being enforced by the proprietor for the time being thereof.

(3) The provisions of this rule are in addition to and not in substitution for the other provisions relating to covenants contained in the said Act.

(4) Provided that where covenants are to be implied under section 77 aforesaid, with or without modification, express reference shall be made in the disposition to that section or to the Parts of the Second Schedule to that Act in which the covenants are set out.

(*q*) Above, Part IX., Section XIX.
(*r*) Above, p. 495.

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Treatise, p. 1115 and n. (*s*). "Delivery of land certificate."

The enactments referred to in note (*s*) are replaced by sect. 63 of the Registration Act (*s*). Of the Rules referred to in the same note, Rules 261 and 262 are not re-enacted; Rules 258, 259, 260, 264, 266, 267 and 268 are replaced respectively by new Rules 261, 262, 264, 265, 267, 268 and 269; and Rules 263 and 265 are replaced by the following new Rule:—

L. R. Rules 266. When production of land certificate may be required, or new one issued. [L. T. Rules, 1903, r. 265.] [Cf. ib. r. 263.]

266. [On any application for registration made by or with the consent of the proprietor of the land or of a charge or incumbrance, the registrar may require the production of the land certificate or charge certificate or incumbrance, and may refuse to proceed with the application until the certificate is produced:]

Provided that a new certificate may be issued, without the production of the original certificate, in any of the cases mentioned in sub-section (4) of section 64 of the Act (*t*), but subject to such notices or inquiries (if any) being given or made as the registrar may, in any case, deem necessary.

Treatise, p. 1116 and n. (*t*).

Sect. 16 of the Land Transfer Act, 1875, was repealed by Rule 67 of the Land Transfer Rules, 1903. By Rule 65 of the same Rules the provisions as to land certificates of sect. 10 of the Act of 1875, as amended by sect. 8 of the Act of 1897, were applied to leasehold land (*u*).

Treatise, pp. 1116 to 1118. "What evidence of title can be required," &c.

This passage of the Treatise is for the most part superseded by the provisions of sect. 110 of the Registration Act (*v*). But where under sub-sect. (2) of that section the vendor under an open contract is bound to furnish such evidence of title as the purchaser would have been entitled to if the land had not been registered, the vendor's obligation to deliver and verify an abstract, and the purchaser's rights, if this be not done, will, it is thought, be as stated in the concluding portion of this passage (*w*).

Treatise, pp. 1117, 1118 and nn. (*c*), (*e*) and (*j*).

Rules 284 to 294 of the Land Transfer Rules, 1903, are replaced by new Rules 287 to 296. Sects. 36 and 37 of the Land Transfer Act, 1875, were repealed by Rule 67 of the Land Transfer Rules, 1903.

(*s*) Above, p. 508.

(*t*) Above, p. 508.

(*u*) See now L. R. Act, s. 63, and Table, above, p. 460.

(*v*) Above, p. 747. And see the observations on that section, above, pp. 749 *et seq.*

(*w*) See Treatise, p. 1118.

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The first part of sect. 8 (4) of the Act of 1897 is re-enacted by sect. 64 (4) (*x*) of the Registration Act. The second part of sect. 8 (4) of the former Act, which provides that subject to any stipulation to the contrary the proprietor of a registered charge shall not be entitled to have custody of the land certificate, is superseded by sect. 65 (*x*) of the Registration Act, which provides that, where a charge or mortgage (otherwise than by deposit) is registered, or is protected by a caution in a specially prescribed form (*y*), the land certificate shall be deposited at the registry until the charge or mortgage is cancelled. Hence a proprietor who has incumbered is not now in a position to produce the land certificate to an intending purchaser. Rule 295R of the Land Transfer Rules, 1903, is not re-enacted.

Treatise, pp. 1118, 1119 and nn. (*o*), (*p*), (*q*) and (*x*). "The register is the only good evidence of title to registered land."

Rule 164 of the Land Transfer Rules, 1903, is replaced by new Rule 147. References to "things declared not to be incumbrances" must be replaced by references to "overriding interests" (*z*). The enactments and rules referred to in note (*x*) to this passage are replaced respectively by sects. 46 and 35 of the Registration Act, and Rules 16, 151, 201 and 200 of the Land Registration Rules, 1925.

Rule 43 of the Land Transfer Rules, 1908, is replaced by new Rule 40. The enactments and rules referred to in note (*z*) to this passage are replaced by sects. 25 to 36 of the Registration Act, and new Rules 74 *et seq.*, 139 *et seq.*

Treatise, p. 1119 and nn. (*y*) and (*z*). "Discharge of registered incumbrances."

Paragraph (iii) of sub-sect. (1) of sect. 16 of the Act of 1897 (*a*) is not re-enacted; and, as we have seen (*b*), a purchaser is not entitled to any evidence or information as to charges or incumbrances registered or protected on the register which are to be discharged at or prior to completion.

Treatise, pp. 1120, 1121 and nn. (*a*) to (*f*). "Incumbrances prior to first registration."

Rules 175 to 181 of the Land Transfer Rules, 1903, are replaced by new Rules 160 to 166. Sect. 19 of the Act of 1875, as amended by the First Schedule to the Act of 1897, is replaced by sect. 46 of the new Act. Rules 216 to 219 of

(*x*) Above, p. 508.
(*y*) As to mortgages off the register, so protected, see L. R. Act, s. 106, above, p. 528.
(*z*) L. R. Act, s. 70, above, p. 468.
(*a*) Treatise, p. 1114.
(*b*) Above, p. 749.

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the Land Transfer Rules, 1903, are replaced by new Rules 200 to 203. Rules 19 and 24 to 26 of the Land Transfer Rules, 1908, are replaced by new Rules 20 and 25 to 27. Land Transfer Rules, 1903, Rule 166 and First Schedule, Form 48, are replaced by new Rule 151 and Schedule, Form 53. Land Transfer Rules, 1903, Rules 177 and 181, are replaced by new Rules 162 and 166. Land Transfer Rules, 1903, Rules 107 and 108 are not re-enacted. An instrument of discharge need not be executed as a deed, but must be signed by the proprietor of the charge and be attested (*c*).

Treatise, p. 1120. "Instrument of discharge."

Reconveyance of legal estate.

Since the commencement of the Property and Registration Acts a legal mortgage, whether of unregistered or registered land, can take effect only as a term or sub-term or its equivalent, a charge by way of legal mortgage, and the legal estate of the mortgagor can never be outstanding in a mortgagee (*d*); and, in the case of registered land, on the extinguishment of a registered charge, the term or sub-term created thereby, expressly or by implication, merges in the reversion (*e*). Moreover, the effect of the all-important sect. 69 of the Registration Act (*f*) is that the "proprietor" (*g*) of land, whenever registered, is deemed to have the legal estate vested in him without any conveyance, and that every outstanding legal estate or term, when satisfied or when the "proprietor" (*g*) becomes entitled to call for it, becomes vested in him without any conveyance.

Treatise, p. 1121. "Where the proprietorship of the incumbrance is registered, and the title to the land is absolute."

In reference to this passage generally, it must be borne in mind that, when a charge or incumbrance registered or protected on the register is to be discharged at or prior to completion, the purchaser is not concerned with the title to the charge or incumbrance, but only to see that it is cleared on or before completion (*h*); and this appears to be the case whether the title be absolute, good leasehold, possessory or qualified. Moreover, the effect of the transfer to a purchaser, when com-

(*c*) See L. R. Rules, 151, and Form 53.
(*d*) See above, Part III., Chapter III., Sections i. to iv.; L. R. Act, s. 27, above, p. 488; s. 33 (4), (5), above, p. 490.
(*e*) See L. R. Act, s. 34 (5), above, p. 491; s. 35, above, p. 492.
(*f*) Above, p. 479.
(*g*) See above, p. 482.
(*h*) L. R. Act, s. 110 (1), above, p. 747. The rules referred to in nn. (*h*) and (*i*) to this passage of the Treatise are replaced respectively by L. R. Rules, 160, 151 and 167.

pleted by registration, is, in the case of a freehold estate, registered with an *absolute* title, and, subject to any entry to the contrary in the register, that he gets the fee simple in like manner as if the registered transferor were entitled to the registered land in fee simple in possession for his own benefit (*i*). The effect of a like transfer in the case of a leasehold estate registered with an *absolute* title is as stated in sub-sect. (1) of sect. 23 (*k*) of the Registration Act. That sub-section is as follows:—

Effect of registration of dispositions of leaseholds. [L. T. Act, 1875, s. 35; L. T. Rules, 1903, r. 140.]

23.—(1) [In the case of a leasehold estate registered with an absolute title, a disposition] (including a sub-demise thereof) [for valuable consideration shall, when registered, be deemed to vest in the transferee] or underlessee [the estate transferred] or created [to the extent of the registered estate,] or for the term created by the sub-demise, as the case may require, [with all implied or expressed rights, privileges, and appurtenances attached to the estate transferred] or created, including (subject to any entry to the contrary on the register) the appropriate rights and interests which would under the Law of Property Act, 1925, have been transferred if the land had not been registered, [but subject as follows:—

(a) To all implied and express covenants, obligations, and liabilities incident to the estate transferred] or created; [and

(b) To the incumbrances] and other entries [(if any) appearing on the register; and

(c) Unless the contrary is expressed on the register, to] the overriding interests, if any, [affecting the estate transferred] or created,

[but free from all other estates and interests whatsoever, including estates and interests of His Majesty;] and the transfer or sub-demise shall operate in like manner as if the registered transferor or sub-lessor were (subject to any entry to the contrary on the register) absolutely entitled to the registered lease for his own benefit.

Treatise, p. 1121. "Where the registered title to the land is possessory."

Where the land is registered with a possessory title only, a transfer of the registered land for valuable consideration will not affect or prejudice the enforcement of any right or interest adverse to or in derogation of the title of the first registered proprietor, and subsisting or capable of arising at the time of the registration of such proprietor; but, save as

(*i*) L. R. Act, s. 20 (1), above, p. 485.

(*k*) This section is referred to above, p. 486. Sub-sects. (2), set out on p. 487, (3), (4) and (5) state respectively how the effect of the transfer is modified in the several cases where the title is good leasehold, qualified, or possessory, and where the disposition is made without valuable consideration.

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aforesaid, will when registered have the same effect as it would have had if the land had been registered with an absolute title (*l*). It may be doubted whether, even where the land is registered with a possessory title and there are registered incumbrances, prior to first registration, whereof the proprietorship is registered, it is essential for the purchaser to investigate, or he is entitled to investigate, the title to the incumbrances, if they are to be discharged at or prior to completion (*m*).

Treatise, p. 1122 and n. (*m*).

Rules 175 to 181 of the Land Transfer Rules, 1903, were made under the power conferred by sect. 22 (6) (c) of the Act of 1897 to make rules for adapting to sub-mortgages and to incumbrances prior to registration the provisions of the Act of 1875 with regard to charges; and are replaced by new Rules 160 to 166, made under the like power conferred by sect. 144 (1) (ix) of the Registration Act. In the case of *A.-G.* v. *Odell* (*n*), Stirling, L. J., in the course of his judgment said: "It is to be remarked that the Act contains no provision conferring on the transferee of a charge any estate or right or interest such as is found in sect. 30 (*o*) with respect to transfers of land." Under the Registration Act, a registered charge confers on the chargee an express or implied term or sub-term in the land, and on the registration of any transfer or transmission of the charge the term or sub-term vests automatically in the proprietor for the time being of the charge, and, subject to any entry to the contrary on the register, such vesting has the same effect as if such proprietor had been registered as the transferee for valuable consideration of the term or sub-term (*p*).

Treatise, p. 1122. "Where the proprietorship of the incumbrance is not registered."

Here, again, it is thought that the purchaser will not be concerned with the title to the incumbrance, if it is to be discharged at or before completion (*q*).

Treatise, p. 1122 and nn. (*o*) and (*q*).

Sect. 28 of the Act of 1875, as amended by the First Schedule to the Act of 1897, is replaced by the following section of the

(*l*) L. R. Act, ss. 20 (3), 23 (4).
(*m*) See L. R. Act, s. 110 (1), above, p. 747.
(*n*) (1906) 2 Ch. at p. 78.
(*o*) Now replaced by L. R. Act, s. 20 (1), above, p. 485.
(*p*) L. R. Act, ss. 27, 33 (4), (5), 44, above, pp. 488, 490, 497.
(*q*) *Ib.*, s. 110 (1), above, p. 747.

"Registered charges subsequent to registration."

L. R. Act, s. 35.

Discharge of charges.

[L. T. Act, 1875, s. 28. L. T. Act, 1897, Sched. I.]

Registration Act, which, as will be seen, provides for the merger of the term or sub-term implied in or granted by the charge, when the charge is satisfied:—

35.—(1) [The registrar shall, on the requisition of the proprietor of any charge, or on due proof of the satisfaction (whole or partial) thereof, notify on the register in the prescribed manner (*r*), by cancelling or varying the original entry or otherwise, the cessation (whole or partial) of the charge, and thereupon the charge shall be deemed to have ceased (in whole or in part) accordingly.]

(2) On the notification on the register of the entire cessation of a registered charge, whether as to the whole or part only of the land affected thereby, the term or sub-term implied in or granted by the charge or by any deed of alteration (*s*), so far as it affects the land to which the discharge extends, shall merge and be extinguished in the registered estate in reversion without any surrender.

Rule 166 of the Land Transfer Rules, 1903, is replaced by new Rule 151.

Treatise, p. 1122.

"Satisfaction of registered charges out of purchase money."

A form of combined transfer and discharge is provided by new Rule 167 and Form 55, replacing Rule 182 and Form 50 of the Land Transfer Rules, 1903.

Treatise, p. 1123 and n. (*z*).

"Notices, cautions, inhibitions, restrictions."

Sects. 50 to 59 of the Act of 1875 are replaced and extended to new matters by sects. 48 to 58 of the Registration Act (*t*). Rules 223 to 342 of the Land Transfer Rules, 1903, are replaced by new Rules 212 to 222, and 230 to 238.

Treatise, ib.

Notices (*u*).

The matters of which notices may be registered are leases (*v*), the miscellaneous claims specified in sect. 41 (1) of the Registration Act, restrictive covenants and manorial incidents (*w*).

Treatise, p. 1124 and nn. (*e*) and (*f*).

"Charge by deposit of the land certificate."

The provisions of sect. 8 (6) (*x*) of the Act of 1897, as modified by Rule 251 of the Land Transfer Rules, 1903, are re-enacted, in effect, by sect. 66 of the Registration Act. Rules 243 to 249 of the same Rules and Rule 250 of the Land

(*r*) See L. R. Rules, 16.
(*s*) See L. R. Act, s. 31.
(*t*) Above, Part VIII., Chapter V., Sections i. to v.
(*u*) As to the effect of notices, see L. R. Act, s. 52, above, p. 501.
(*v*) As to leases for, or determinable on, life, see above, Part II., Chapter IV., Section iv.
(*w*) Above, p. 498.
(*x*) The reference in n. (*e*) on this page of the Treatise should be to sect. 8 (6), not sect. 8 (4).

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Transfer Rules, 1907, are replaced by new Rules 239 to 246. Notice under Rule 239 of the last-mentioned Rules of the deposit of a land certificate or charge certificate as security for money operates as a caution under sect. 54 of the Registration Act (*y*).

Treatise, pp. 1125 to 1127.

"Unregistered estates and interests in registered land."

We have seen that "overriding interests" take the place of "things declared not to be incumbrances" (*z*), and that a vendor is not bound to make a statutory declaration, though, no doubt, he must answer inquiries as to the existence or otherwise of overriding interests (*a*). Sect. 49 of the Act of 1875 is replaced, with important modifications, by sect. 101 of the Registration Act. The latter section is the first of a group of sections, which have already been considered in some detail (*b*), relating to "Unregistered Dealings with Registered Land," and "Powers of Dealing with Registered Land off the Register." The main principle underlying these provisions is that dealings "off the register" take effect as "minor interests" (*c*), and are capable of being overridden by "registered dispositions" for valuable consideration (*d*). Minor interests, subject to certain exceptions, take effect only in equity, but may be protected by entry on the register of such notices, cautions, inhibitions and restrictions as are provided for by the new Act or Rules (*e*). As a general rule, minor interests are kept entirely off the registered title, and for this purpose a separate index is kept for minor interests, as appears by the following new Rule:—

L. R. Rules, 11.

Minor Interests Index.

11.—(1) There shall also be kept an index to be called the Minor Interests Index in which all priority cautions and inhibitions relating to dealings with minor interests, which do not affect the powers of disposition of the proprietor, shall be entered.

(2) This index shall be in such form and contain such particulars as the registrar may from time to time determine. The entries therein shall not form part of the register, nor shall any purchaser be concerned with that index.

(*y*) L. R. Rules, 239 (4); L. R. Act, s. 54, above, p. 502.
(*z*) L. R. Act, s. 70, above, p. 468.
(*a*) Above, p. 751.
(*b*) L. R. Act, Part IX., ss. 101 to 125, above, Part VIII., Chapter X.
(*c*) See above, p. 472.
(*d*) L. R. Act, s. 101 (2), above, p. 525.
(*e*) *Ib.* (3).

References in this passage to "interests declared not to be incumbrances" must be replaced by references to "overriding interests," which include, in the case of a possessory, qualified, or good leasehold title, all estates, rights, interests, and powers excepted from the effect of registration (*f*). The enactments and rules referred to in note (*p*) to this passage are replaced by sects. 20 and 23 of the new Act (*g*); sect. 83 (1) of the Act of 1875, as amended by the First Schedule to the Act of 1897, is replaced by sect. 74 of the new Act (*h*); and sects. 29 and 34 (*i*) of the Act of 1875, so far as they relate to registration, are replaced by sects. 19 and 22 of the new Act (*k*).

Treatise, pp. 1125 to 1127 and nn. (*p*), (*q*) and (*z*).

"Purchaser not entitled to an abstract of documents creating unregistered estates, except as to matters declared not to be incumbrances."

"Extinguishment of unregistered estates by a registered transfer for value."

Under the new Act protection to a purchaser against unregistered estates is afforded not only by the effect of a "registered disposition" (*l*), but also by the facts (1) that the disposition operates not only as an exercise of "the powers conferred on the proprietor by way of transfer, charge, lease or otherwise" (*l*), but as a transfer, wholly or to the extent of the interest created, of the "legal estate" which is deemed to be vested in the proprietor, namely, where the registered land is freehold, the legal estate in fee simple in possession, and where the registered land is leasehold, the legal term created by the registered lease (*m*); and (2) that the unregistered estates take effect as minor interests and in equity only, and are capable of being overriden by "registered dispositions" for valuable consideration (*o*). It is none the less true that, *ex vi termini*, a "registered disposition" can afford no protection until it is registered. The question, therefore, raised at the end of this passage of the Treatise still requires consideration, namely, At what time and against what conveyance is a purchaser of registered land under an open contract bound to pay his purchase-money?

Treatise, pp. 1125 to 1126.

Protection of purchaser against unregistered estates.

It is thought that this passage remains unaffected by any changes in the law, except as follows:—

Treatise, pp. 1127 to 1132.

(I.) The repealed Rules 111, 118, 117 and 157, set out on pages 1127 to 1129 of the Treatise, are replaced respectively

"Time for completion," &c.

Course of procedure.

(*f*) L. R. Act, s. 70, above, pp. 467, 468.
(*g*) Above, pp. 485, 486. (*h*) Above, p. 511.
(*i*) The reference in n. (*z*) on p. 1127 of the Treatise to sect. 30 of the L. T. Act, 1875, should have been to sect. 34.
(*k*) Above, pp. 484, 486. (*l*) See above, p. 482.
(*m*) See L. R. Act, s. 69 (1), above, p. 479.
(*o*) L. R. Act, s. 101 (2), (3), above, p. 525.

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by new Rules 83, 89, 88, and 138, without material modifications, except that (1) the words "they shall be examined by an officer of the registry, and if certified by him as capable of registration," in old Rule 111 are omitted in new Rule 83; (2) the reference in old Rule 117 to "Form 19 in the First Schedule hereto" is replaced in new Rule 88 by a reference to "Form 18" (*p*); and (3) the reference in old Rule 157 to "sects. 29 and 34 of the Act of 1875" is replaced in new Rule 138 by a reference to "sects. 19 to 23 of the Act" (*q*).

Treatise, p. 1129 and n. (*i*).

Instrument of transfer.

(II.) Form 20 in the First Schedule to the Land Transfer Rules, 1903, is replaced by Form 19 in the Schedule to the new Rules (*p*). To insert words of inheritance in the new Form would obviously be inappropriate (*r*), and the appropriate words of limitation, namely, "in fee simple," are no longer necessary to pass an estate in fee simple (*s*).

Treatise, pp. 1132, 1133 and n. (*x*).

"Is the purchaser bound to have regard to notice given to him of unregistered interests?"

Under the Registration Act the answer to this question must, it seems, be in the negative, not only because of the effect of registration of a disposition for valuable consideration (*t*), but also because unregistered estates take effect as "minor interests," capable of being overreached by registered dispositions for valuable consideration (*u*); and, further, because a purchaser, even if he have express notice of a minor interest is unaffected thereby, unless the minor interest is capable of being, and in fact is, protected by a caution or other entry on the register (*v*). This protection is given to a purchaser by subsect. (6) of sect. 59 of the Registration Act (*w*), which provides that, subject to the provisions of that Act relating to fraud and to the title of a trustee in bankruptcy, a purchaser acquiring title under a registered disposition shall not be concerned with any pending action, writ, order, deed of arrangement, *or other document, matter, or claim* (not being an overriding interest) which is not protected by a caution or other entry on the register, *whether he has or has not notice thereof, express, implied, or constructive.*

L. R. Act, s. 59 (6).

(*p*) The old form and the new form are substantially identical.
(*q*) See above, Part VIII., Chapter IV., pp. 484 to 487.
(*r*) See A. E. Act, s. 45, above, p. 449.
(*s*) L. P. Act, s. 60 (1), (4), above, p. 104.
(*t*) Above, pp. 485, 486.
(*u*) Above, p. 525.
(*v*) See, *e.g.*, the provisions as to mortgages "off the register," L. R. Act, s. 106, above, pp. 528 *et seq.*
(*w*) Above, p. 504.

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The last quoted enactment appears to be wide enough to protect a person dealing with registered land, who receives notice of such a bare right or equity as is considered in this passage of the Treatise, subject only to the provisions of the Registration Act as to fraud.

Treatise, pp. 1133 to 1135. "Notice of a bare right or equity."

Sect. 114 of the Registration Act enacts as follows:—

Fraud. L. R. Act, s. 114. Fraudulent dispositions how far to be void.

114. Subject to the provisions in this Act contained with respect to indemnity (*w*) and to registered dispositions for valuable consideration, any disposition of land or of a charge, which if unregistered would be fraudulent and void, shall, notwithstanding registration, be fraudulent and void in like manner.

This section, with the introduction of the words "indemnity and to" after "with respect to," re-enacts sect. 98 of the Land Transfer Act, 1875. Apart from those words, the effect of the section appears to be that, after a transfer for value by a person who took under a registered disposition which was fraudulent and void has been registered, the defect in the title of the transferor would not avail against the transferee (*x*). If, therefore, an intending purchaser receive notice of facts which would render the disposition *to himself* fraudulent and void, it seems that he cannot safely complete the purchase.

Treatise, p. 1135 and n. (*n*). "Can a vendor of registered land enforce the contract where there are unregistered estates or interests outstanding in other persons?"

Inasmuch as unregistered estates and interests take effect as "minor interests," and are capable of being overridden by registered dispositions for valuable consideration (*y*), it is thought that the answer to this question must now be in the affirmative, especially as a purchaser acquiring title under a registered disposition is not concerned with any matter or claim (not being an overriding interest) which is not protected by a caution or other entry on the register, whether he has or has not notice thereof, express, implied, or constructive (*z*). The provisions of sects. 33 and 38 of the Land Transfer Act, 1875, referred to in note (*n*) to this passage of the Treatise, are replaced by sects. 20 (4) and 23 (5) of the Registration Act (*a*), in which the expression "minor interests" takes the place of "unregistered estates, rights, interests, or equities."

(*w*) See L. R. Act, s. 83, above, p. 514.
(*x*) See Brickdale & Sheldon's Land Transfer Acts, 2nd ed., p. 233.
(*y*) L. R. Act, s. 101 (2), above, p. 525. See also L. R. Rules, 11, as to the Minor Interests Index, above, p. 760.
(*z*) L. R. Act, s. 59 (6), above, p. 504. (*a*) Above, pp. 486, 487.

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Treatise, p. 1136 and n. (s). "Restrictive conditions."

Sect. 84 of the Act of 1895, as amended by the First Schedule to the Act of 1897, is replaced, with considerable modifications, by sect. 40 of the Registration Act (*b*), which relates to the "creation and discharge of restrictive covenants." Sect. 50 of the same Act (*c*) provides for the entry on the register of notice of a restrictive covenant on the application of any person entitled to the benefit thereof, which notice takes the place of registration as a land charge. Rule 43 of the Land Transfer Rules, 1908, is re-enacted by new Rule 40. Rule 223 of the Land Transfer Rules, 1903, is superseded by new Rule 212 (*d*), which regulates the procedure both under sect. 40 and under sect. 50 of the new Act. It seems clear that a purchaser of registered land is unaffected with restrictive conditions which are not noted on the register, unless they fall within the description of overriding interests (*e*).

Treatise, pp. 1136 to 1138 nn. (*e*) and (*h*). "Searches on purchase of registered land."

A purchaser who is to acquire a title by a "registered disposition" (*f*) is not concerned with charges or incumbrances registered or protected on the register which are to be discharged or overridden at or before completion (*g*), the intention of the Act being, apparently, that it is the duty of the vendor to clear the register of any such charges or incumbrances. Nor, subject to the provisions of the Act relating to fraud and as to the title of a trustee in bankruptcy, is a purchaser concerned with any pending action, writ, order, deed of arrangement, or other document, matter or thing (not being an overriding interest) which is not protected by a caution or other entry on the register (*e*). Overriding interests include, in the case of a possessory, qualified, or good leasehold title, all estates, rights, interests, and powers excepted from the effect of registration (*h*), and, in respect of these, the purchaser must make the same searches (if any) as would be necessary on a purchase of unregistered land, subject, however, to the qualification that he is not concerned to make any search for any pending action, writ, order, deed of arrangement or land charge (other than a local land charge) to which sub-sect. (7) of sect. 110 of the Act applies (*i*), which can be protected under

(*b*) Above, p. 494.
(*c*) Above, p. 500.
(*d*) Above, p. 494.
(*e*) L. R. Act, s. 59 (6), above, p. 504.
(*f*) Above, p. 482.
(*g*) L. R. Act, s. 110 (1), above, p. 747.
(*h*) Above, p. 468.
(*i*) Above, p. 748.

the Act by lodging or registering a creditor's notice, restriction, inhibition, caution, or other notice. A purchaser, therefore, of registered land must search for local land charges (*k*). Sect. 9 (3) of the Land Transfer Act, 1897, so far as it relates to the registration of annuities, is not re-enacted, but Rule 160 of the Land Transfer Rules, 1903, is re-enacted by new Rule 142. The Rules as to land charges, referred to in note (*h*) to this passage of the Treatise, are superseded by sect. 59 (2) of the Registration Act and new Rule 155 (*l*).

Local land charges.

Annuities.

Land charges.

A purchaser under a "registered disposition" should make sure that at the date of the disposition neither a "creditors' notice" nor a "bankruptcy inhibition" is registered against the title of the proprietor who makes the disposition; for in that case the title of the purchaser, when registered, will, if he be a purchaser in good faith for money or money's worth, prevail against the title of the trustee in bankruptcy of the proprietor (*m*). This, however, is the case only where the title of the trustee was acquired *after* the commencement of the Registration Act (*m*), so that a search for earlier bankruptcies may still be necessary in some cases.

Bankruptcy.

The Rules referred to in these notes to this passage of the Treatise are replaced by new Rules 2 to 10, 272 to 285, 288 and 293.

Treatise, pp. 1138, 1139 and nn. (*n*), (*o*), (*p*) and (*s*). "The search in the Land Register."

The importance of making inquiries as to the possession or enjoyment of the land is emphasized by the fact that "overriding interests" (*n*) include "the rights of every person in actual occupation of the land or in receipt of the rents and profits thereof, save where inquiry is made of such person and the rights are not disclosed" (*o*). As we have seen (*p*), no search is necessary for land charges except local land charges.

Treatise, p. 1139. "Inquiries."

"Land charges."

This passage of the Treatise will continue to apply to death duties which became payable or leviable before the commence-

Treatise, p. 1140 and nn. (*f*) and (*h*).

(*k*) See L. C. Act, s. 15, above, p. 418, as amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 560.
(*l*) Above, p. 504.
(*m*) L. R. Act, s. 61 (6), above, p. 506.
(*n*) Above, p. 468.
(*o*) See above, p. 468.
(*p*) Above, p. 764.

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ment of the Registration Act (*q*). Sect. 13 of the Land Transfer Act, 1897, is not re-enacted. Rules 208 to 211 of the Land Transfer Rules, 1903, are superseded by new Rules 191 to 193.

Treatise, p. 1140 and n. (*j*). "Purchaser should lodge a caution."

The enactments and rules referred to in note (*j*) to this passage are replaced respectively by sects. 54 to 57 of the Registration Act and new Rules 215 to 237.

Treatise, p. 1141 and nn. (*k*), (*l*), (*n*) and (*p*). "Transfer of registered land, how effected."

Sects. 36 and 37 of the Act of 1875 were repealed by Rule 67 of the Land Transfer Rules, 1903. Sects. 29 to 33 (relating to transfers of freehold land), and sects. 34, 35, 38 and 39 (relating to transfers of leasehold land), are replaced respectively by sects. 19 to 21 (*r*) and sects. 21 to 24 (*s*) of the Registration Act. Rules 97 to 157 and 182 of the Land Transfer Rules, 1903, so far as re-enacted, are replaced by new Rules 74 to 138 and 167. Rules 102, 105 to 109, 125, 136, 152 and 156 of the Rules of 1903 are not re-enacted. Rule 110 of 1903 is replaced by the following new Rule:—

L. R. Rules, 82.

ii. *Execution and Attestation.*

Instruments executed by attorney. [L. T. Rules, 1903, r. 110.]

82.—(1) [If any instrument is executed by attorney, the power of attorney, or an office copy thereof, shall be produced to the registrar and, in cases not falling within sections] 126 and 127 of the Law of Property Act, 1925 (*t*), [evidence (by the statutory declaration of the attorney or otherwise) sufficient to satisfy the registrar that the principal was alive at the time of the execution of the instrument and that the power was then unrevoked, shall also be produced.]

(2) The original power of attorney, or a certified copy thereof, shall be filed at the Land Registry, unless it also relates to unregistered land or to an unregistered charge, in which case the original or a certified copy thereof shall be filed at the Central Office, and an office copy shall be filed at the registry, as provided by section 125 (1) (*u*) of the said Act.

(*q*) L. R. Act, s. 73 (16), above, p. 471. As to death duties which become payable or leviable after such commencement, see above, *ib.*, and below, Section XXI.

(*r*) Above, Part VIII., Chapter IV., Section ii.

(*s*) Above, *ib.*, Section iii.

(*t*) Above, p. 217.

(*u*) Above, p. 216. Rules have now been made as to the deposit of powers of attorney under sect. 219 of the S. C. J. (Consolidation) Act, 1925; sect. 25 (as amended) of the T. Act; and sect. 125 of the L. P. Act. See Ord. XLIA., R. S. C. (No. 4), 1926; S. R. & O., 1926, No. 956/L. 29; (1926) W. N., Aug. 28, 1926.

Of the Forms of Transfer in the Schedule to the new Rules, Nos. 19, 20, 25 to 32 and 36 reproduce substantially the old Forms 20, 21, 28 to 35 and 36; Nos. 21 to 24 (superseding old Forms 22 to 27) are "vesting transfers" for giving effect to sects. 5 and 10 of the Settled Land Act (*v*); Nos. 33 and 34 are new; and No. 43 differs from the old Form 41 by containing express covenants by the transferee "for the benefit of the remainder of the land" comprised in the title to observe the specified restrictions (*w*). It is suggested that, having regard to the provisions of sect. 69 (*x*) of the Registration Act, the legal estate (that is, the fee simple in possession, or, in the case of leasehold land, the legal term created by the registered lease) is always vested in the "proprietor" (*y*), and, accordingly, that a simple instrument of transfer in the form given in the new Rules (*z*) operates, *when the transfer is registered*, not only by way of execution of the statutory power of transfer, but also as a grant of the proprietor's estate; and, further, that the insertion in the instrument of transfer of words of grant of the estate would effect nothing, as there is no *unregistered* legal estate on which they could operate.

Treatise, p. 1141. "Whether any other assurance than a registered transfer is required."

Any instrument off the register purporting to give effect to a transaction is not only unnecessary, but, with certain prescribed exceptions, void, if and so far as the transaction (1) relates exclusively to registered land or a registered charge, and (2) is capable of being effected, and is effected, by a registered disposition (*a*); and in any such case any such instrument will be valid only if it is in accordance with a certificate issued by the registrar under new Rule 96 (*a*). "Things declared not to be incumbrances" are now classified as "overriding interests" (*b*). As regards registered incumbrances or charges, these now operate to vest in the incumbrancer, expressly or by implication, a term or sub-term (*c*); and, on the notification on the register of the entire cessation of a registered

(*v*) Above, Part IV., Chapter IV.
(*w*) See L. R. Act, s. 40, above, p. 494.
(*x*) Above, p. 479.
(*y*) See above, p. 482.
(*z*) See, *e.g.*, L. R. Rules, Schedule, Forms 19 and 32.
(*a*) See L. R. Act, s. 39, and L. R. Rules, 96, above, p. 493.
(*b*) L. R. Act, s. 70, above, p. 468.
(*c*) L. R. Act, s. 27, above, p. 488; s. 33 (4), (5), above, p. 490; s. 44, above, p. 497.

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charge, the term or sub-term merges automatically in the registered estate in reversion (*d*).

Treatise, p. 1142. "Protected" incumbrances.

We have seen (*e*) that a purchaser is not concerned with charges or incumbrances registered *or protected on the register* which are to be discharged on or before completion. The words in italics are apparently intended to describe or to include what on this page of the Treatise are described as "registered incumbrances prior to first registration, whereof the proprietorship has not been registered." Such an incumbrance (hereinafter referred to as "a protected incumbrance") is, of course, not a "registered charge," which latter expression includes a mortgage or incumbrance *registered* as a charge (*f*). A protected incumbrance, unless purely equitable, will, it is thought, have the same incidents as if it were a legal mortgage of unregistered land, and, accordingly, will subsist as a term or sub-term (*g*), and may be discharged by an endorsed receipt (*h*).

Absolute title.

The passage of the Treatise which has just been discussed, the marginal note whereto is "Whether any other assurance than a registered transfer is required," dealt with the case where the vendor is registered as proprietor with an absolute title. Both that passage and the next following passages dealing respectively with "Sale of land registered with a qualified title," and "Sale of land registered with a possessory title," must be read in conjunction with sub-sect. (2) of sect. 69 (*i*) of the Registration Act. That sub-section provides that, where any legal estate or term left outstanding at the date of first registration (*whether before or after the commencement of the Act*), or disposed of or created under sect. 49 of the Land Transfer Act, 1875 (*k*), *before* such commencement, becomes satisfied, *or* the proprietor of the land becomes entitled to require the same to be vested in or surrendered to him, *and* the entry, if any, for protecting the same on the register has been

Qualified title.

Possessory title.

L. R. Act, s. 69 (2).

Outstanding estates.

(*d*) L. R. Act, s. 35 (2), above, p. 759.
(*e*) L. R. Act, s. 110 (1), above, p. 747.
(*f*) See Table of Definitions, above, Part I., Chapter VII. As to the registration as proprietor of a person entitled to a protected incumbrance, see L. R. Rules, 160 to 166, replacing rr. 175 to 181 of L. T. Rules, 1903.
(*g*) Above, p. 111. (*h*) Above, p. 120.
(*i*) Above, p. 479.
(*k*) That is, as an unregistered estate or term. See above, p. 525.

cancelled, the same shall thereupon, *without any conveyance*, vest in the proprietor of the land, as if the same had been conveyed or surrendered to him, as the case may be. It will be noticed that this sub-section applies *whenever* and *however* (*l*) first registration took place, as does also sub-sect. (1), under which the "proprietor," that is, the registered proprietor for the time being (*m*) of land, is deemed to have vested in him the whole registered legal estate (*n*) (*i.e.*, the fee simple in possession, or the term created by the registered lease), subject, however, to the "overriding interests," if any, and to any mortgage term or charge by way of legal mortgage which has priority to the registered estate (*o*). It follows that overriding interests, which, as we have seen (*p*), include, in the case of a possessory, qualified, or good leasehold title, all estates, rights, interests and powers excepted from the effect of registration, can subsist as legal estates of such a kind only as do not *impair* the legal estate of the proprietor, and are capable of subsisting *concurrently* with his legal estate.

L. R. Act, s. 69 (1).

Legal estate.

In these passages "overriding interests" must be substituted for "things declared not to be incumbrances" (*p*); sects. 20 (2) and 23 (3) of the Registration Act must be substituted for the enactments and rules mentioned in note (*k*); and sects. 20 (3) and 23 (4) of the Registration Act must be substituted for the enactments and rules mentioned in note (*p*). In regard to the statement in note (*r*), it is thought that, under the new Act, the whole registered legal estate must always be *in* the proprietor (*s*) and pass to the purchaser by a registered transfer. It follows, therefore, that no supplemental grant or assignment of the fee simple or term contracted to be sold can be necessary (*t*).

Treatise, pp. 1143, 1144 and nn. (*k*), (*p*) and (*r*).

Only in special cases will a separate deed accompanying a registered disposition be proper or even valid (*u*), and implied

Treatise, pp. 1144, 1145 and nn. (*u*), (*y*) and (*z*).

(*l*) That is, whether with absolute, possessory, qualified, or good leasehold title.
(*m*) See above, p. 482.
(*n*) Only legal estates can now be registered. See above, p. 467.
(*o*) L. R. Act, s. 69 (1), above, p. 479.
(*p*) Above, p. 468.
(*s*) See L. R. Act, s. 69 (1), above, p. 479.
(*t*) Except in special cases, any such supplemental grant or assignment would be void. See L. R. Act, s. 39, above, p. 493.
(*u*) See L. R. Act, s. 39, and L. R. Rules, 96, above, p. 493.

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covenants for title may be imported into registered dispositions by inserting the appropriate expressions (*v*).

"As to asserting in an instrument of transfer matters extraneous to the transferee's registration."

Documents.

Rules 119 and 294 of the Rules of 1903 are replaced respectively by new Rules 90 and 296. It is now provided that, where the register refers to a filed abstract or copy of or extract from a deed or other document, such abstract or extract shall, as between vendor and purchaser, be deemed to be correct, and to contain all material portions of the original, and no person dealing with any registered land or charge shall have a right to require production of the original, or be affected in any way by any provisions of the said document other than those appearing in such abstract, copy or extract (*w*). Moreover, office copies of documents and plans filed in the registry are now made evidence (*x*). The enactments and rules referred to in note (*z*) are replaced respectively by sect. 68 of the Registration Act and new Rules 261, 262 and 264.

Treatise, p. 1145 and n. (*d*).

"Receipt clause should be inserted in the instrument of transfer."

This passage applies equally to the new Form 19 (*y*), which is substantially identical with old Form 20.

Treatise, p. 1146 and nn. (*f*) and (*k*).

"Stamps on sale of registered land."

"Land registry fee stamps."

Sect. 83 (7) of the Land Transfer Act, 1875, is re-enacted by sect. 14 (3) of the Registration Act. Rule 123 of the Land Transfer Rules, 1903, is re-enacted by new Rule 94, but with the substitution in the latter rule of the words "capable of registration" for the words "on the register." This change is, no doubt, due to the fact that, under the new Act, an instrument *off* the register purporting to give effect to a transaction capable of being effected by a registered disposition is, generally speaking, void (*z*). Rule 111 of the Land Transfer Rules, 1903, is re-enacted by new Rule 83. The Land Transfer Fee Order, 1903, is replaced by the Land Registration Fee Order, 1925 (*a*).

Treatise, p. 1147 and n. (*m*).

"Purchaser of registered land entitled to delivery of the title deeds."

Rule 47 of the Land Transfer Rules, 1908, is re-enacted by new Rule 42. The question may arise whether the provisions of sub-sect. (4) of sect. 110 of the Act (*b*) affect the purchaser's right to have delivered over to him on completion any original document to which that sub-section applies.

(*v*) Above, p. 753. (*w*) L. R. Act, s. 110 (4), above, p. 748.
(*x*) *Ib.*, s. 113, above, p. 532.
(*y*) L. R. Rules, Schedule, Form 19.
(*z*) L. R. Act, s. 39, above, p. 493.
(*a*) Above, p. 459, n. (*c*). (*b*) Above, p. 748.

The enactments and rules referred to in note (*z*) to this passage are replaced by sect. 23 of the new Act (*c*). It is believed that it has been the constant practice on the sale of registered leasehold land to abstract and produce the lease under which the land is held and to hand it over on completion, and there appears to be nothing in the new Act or Rules to interfere with this practice (*d*). Rule 62 of the Land Transfer Rules, 1903, is re-enacted by new Rule 45.

Treatise, pp. 1147 to 1149 and n. (*z*). "Sale of registered leaseholds."

Sect. 39 of the Land Transfer Act, 1875, is replaced, in substance, by sub-sect. (1) of sect. 24 (*e*) of the new Act, sub-sect. (2) of which latter section prescribes what covenants are to be implied where part only of the land held under a lease is transferred. Rules 138 and 139 of the Land Transfer Rules, 1903, are re-enacted, with some modifications and, in particular, by introducing references to sect. 77 (*f*) of the Property Act, by new Rules 115 and 117 (*g*).

Treatise, p. 1149 and n. (*e*). "Covenants implied on transfer of registered leaseholds."

Under the new Act, where land which is *already settled* is registered, it must be registered in the name of the "tenant for life" or "statutory owner" (*h*); and there must also be entered on the register such restrictions as may be prescribed or may be expedient for the protection of the persons beneficially interested in the land (*i*). The normal form of restriction is that no disposition under which capital money arises is to be registered unless the money is paid to the trustees of the settlement (naming them) or into Court, and that, except under an order of the Registrar, no disposition is to be registered unless authorised by the Settled Land Act (*k*).

Treatise, pp. 1149 to 1151 and nn. (*h*), (*i*), (*k*), (*l*), (*m*), (*q*) and (*u*). "Purchase of registered land which is settled."

(*c*) Above, pp. 486, 757.
(*d*) As to perpetually renewable leases and sub-leases, see L. R. Rules, 210.
(*e*) Above, p. 487.
(*f*) Above, p. 741.
(*g*) See also L. R. Rules, 116, introducing two new Forms, 33 and 34.
(*h*) L. R. Act, s. 86 (1), above, p. 516, replacing L. T. Act, 1897, s. 6 (1).
(*i*) *Ib.*, s. 86 (3), replacing L. T. Act, 1897, s. 6 (2). Of the L. T. Rules, 1903, r. 78 is not re-enacted; rr. 79 to 81 are replaced by L. R. Rules, 56 to 58; rr. 128, 129 are replaced by L. R. Rules, 99, 100; and rr. 186 to 190 are superseded by L. R. Rules, 171. Of the forms of restrictions prescribed by L. T. Rules, 1903, r. 81, Forms 6 and 8 are not re-enacted, and Form 7 is replaced by Form 9 in the Schedule to the L. R. Rules.
(*k*) L. R. Rules, 58 and Schedule, Form 9.

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So, also, where land already registered is acquired with capital money or becomes subject to a settlement, it must stand in the name of the tenant for life or statutory owner as the registered proprietor with the appropriate restrictions (*l*). Subject only to the restrictions entered on the register, the tenant for life or statutory owner, registered as proprietor, will have all the powers of disposition given to the proprietor of registered land (*m*), and, on a sale by him, the provisions as between vendor and purchaser of sect. 110 of the Act (*n*) will apply; but the purchaser must, of course, see that the restrictions are complied with.

The "settlement" (*o*), or an abstract or copy of it, may be filed in the registry for reference in the prescribed manner (*p*), but such filing will not affect a purchaser from the proprietor with notice of its provisions, or entitle him to call for production of the settlement, or for any information or evidence as to its contents (*q*). Where, by reason of the proprietor being registered with possessory title, or for any other reason there are "matters excepted from the effect of registration," the purchaser will be entitled to such evidence in respect thereof as he would have been entitled to if the land had not been registered (*r*).

Treatise, p. 1151. "Purchase of registered land subject to registered charges or incumbrances."

In this case the purchaser, on registration of the transfer to himself, will, under the new Act, always obtain the registered *legal* estate, whether the vendor be registered with an absolute title or not, but subject to the overriding interests, if any (*s*), and subject also to the incumbrances or charges registered or protected on the register subject to which he contracts to buy.

(*l*) L. R. Act, s. 86 (4), above, p. 517; s. 87 (3), above, p. 518.

(*m*) As to these powers, see L. R. Act, ss. 18 to 24, above, Part VIII., Chapter IV., Sections ii., iii., superseding L. T. Act, 1875, ss. 29 *et seq.*; and as to charges by the proprietor, see L. R. Act, ss. 25 *et seq.*, above, *ib.*, Section iv., superseding L. T. Act, 1875, ss. 22 *et seq.* Sect. 8 of the L. T. Act, 1897, relating to the production of certificates, is replaced by L. R. Act, s. 64, above, p. 508; and s. 6 (8) of the L. T. Act, 1897, is not re-enacted, being superseded by L. R. Act, s. 86 (2), above, p. 516.

(*n*) Above, p. 747.

(*o*) As to what this includes, see L. R. Act, s. 88 (2).

(*p*) See L. R. Rules, 59.

(*q*) L. R. Act, s. 88 (1), replacing L. T. Act, 1897, s. 6 (6).

(*r*) L. R. Act, s. 110 (2), above, p. 344. May not this possibly entitle the purchaser to production of the settlement?

(*s*) L. R. Act, s. 69 (1), above, p. 479.

Tacking.

He will not be affected with notice of any incumbrances or charges not registered or protected on the register (*t*). As regards unregistered land, the right to tack is abolished by sect. 94 of the Property Act (*u*), save in regard to the making of advances as authorised by that section (*v*). In the case of registered land, express provision is made for the protection of charges for securing further advances (*w*).

Treatise, p. 1152 and nn. (*i*) and (*k*). "Consolidation of securities."

The effect of sect. 25 (3) of the Registration Act (*x*), replacing sect. 9 (4) of the Act of 1897, appears to be to avoid any express reservation in a *registered* charge of the right to consolidate the charge with a charge on any other *registered* land or charge. Notwithstanding this enactment, Rule 169 of the Rules of 1903 is re-enacted verbatim by new Rule 154. The new enactment and the substituted rule appear to be inconsistent, as the latter purports to deal with the case where a charge "reserves the right to consolidate." In any case a purchaser acquiring title under a registered disposition will be unaffected by any charge (not being an overriding interest (*y*)) which is not protected by a caution or other entry in the register (*z*). Under the Registration Act a purchaser acquiring title under a registered transfer will always acquire the registered legal estate (*a*), and the estate, whether registered or not, of the incumbrancer will take effect only as an express or implied term or sub-term (*b*).

Outstanding legal estate.

Treatise, pp. 1153, 1154 and nn. (*v*), (*s*) and (*u*). "Registered incorporeal hereditaments."

Sect. 82 of the Act of 1875, as amended by the First Schedule to the Act of 1897, is not re-enacted, nor is sect. 24 (1) of the latter Act, except that sub-sect. (1) of sect. 120 of the new Act provides that nothing in the new Act or in any Order making registration of title compulsory on sale shall render compulsory the registration of the title to an incorporeal hereditament or to mines and minerals apart from the surface, or to corporeal

(*t*) L. R. Act, s. 59 (6), above, p. 504.
(*u*) Above, p. 127.
(*v*) As amended by L. P. Act, 1926, s. 7 and Schedule, above, p. 555.
(*w*) L. R. Act, s. 30, above, p. 489, as amended by L. P. Act, 1926, s. 5, above, p. 546. As to the implied abolition of tacking in the case of registered charges, see Brickdale & Sheldon's Land Transfer Acts, 2nd ed., p. 169.
(*x*) Above, p. 488.
(*y*) L. R. Act, s. 70, above, p. 468.
(*z*) *Ib.*, s. 59 (6), above, p. 504. As to tacking, see above.
(*a*) *Ib.*, s. 69 (1), above, p. 479.
(*b*) Above, pp. 111, 117, 488.

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hereditaments parcel of a manor and included in the sale of a manor as such. The definition of "land" in the Registration Act includes a manor, an advowson, and a "rent" (*c*) and other incorporeal hereditaments, and an easement, right, privilege, or benefit, in, over, or derived from land (*c*). It follows that any incorporeal hereditament, or easement, right, privilege, or benefit, in, over, or derived from land, if held for a "legal estate" (*d*), may be registered, and that the registered proprietor thereof will have such of the statutory powers of disposition (*e*) as are applicable, having regard to the nature of the property registered. Matters declared by the repealed Acts not to be incumbrances are now classified as "overriding interests," which, as we have seen (*f*), include quit rents, crown rents, heriots, and other rents and charges until extinguished having their origin in tenure, land tax, tithe rentcharge, payments in lieu of tithes, profits *à prendre*, and easements not being equitable easements required to be protected by notice on the register. Overriding interests are excepted from the effect of first registration and of registered dispositions of registered land (*g*), and, if not registered or protected on the register (*h*), remain subject to the general law as regards their sale and assurance.

Treatise, p. 1154 and n. (*f*). "Rentcharges issuing out of land."

Existing at first registration.

Rentcharges or annuities issuing out of registered land are not overriding interests (*i*), and, unless created for a "legal estate" (*k*), will be minor interests" (*m*). Legal rentcharges (*k*), if existing when the land is registered, may be entered in the register as incumbrances prior to first registration, either without their proprietorship being registered or not (*n*). When so entered they will be protected, as being incumbrances "appearing on the register," from the effect of first registration and registered dispositions of the land (*o*). If the proprietorship of such legal rentcharges be not registered, they will remain subject to the general law as regards their sale and

(*c*) See Table of Definitions, above, Part I., Chapter VII.
(*d*) See L. P. Act, s. 1, above, p. 97; L. R. Act, s. 2, above, p. 467.
(*e*) L. R. Act, ss. 18, 21. (*f*) *Ib.*, s. 70, above, p. 468.
(*g*) *Ib.*, ss. 5 to 7, 9 to 12, 20, 23, above, pp. 477, 478, 485, 486.
(*h*) Above, p. 469. (*i*) L. R. Act, s. 70, above, p. 468.
(*k*) L. P. Act, s. 1 (2) (b), above, p. 98.
(*m*) Above, p. 472.
(*n*) See L. R. Rules, 40 and 160 to 166, replacing the rules referred to in n. (*f*) to this passage of the Treatise.
(*o*) See above, n. (*g*).

assurance. From and after the registration of the proprietor of any such legal rentcharge (*p*), it will be in the position of a legal rentcharge created by the proprietor after registration.

Treatise, pp. 1154, 1155 and nn. (*k*), (*l*) and (*m*).

Rentcharges created by the registered proprietor.

Legal rentcharges.

The law relating to the creation of rentcharges by the proprietor of registered land is materially altered by the Registration Act. Thus so much of sect. 9 (3) of the Act of 1897 as empowered every proprietor of land to charge it with an annuity or other periodical payment is not re-enacted, and the only power to create charges, to take effect as registered charges, conferred by the new Act on the proprietor of any registered land, is a power to charge the registered land with the payment at an appointed time of any principal sum of money either with or without interest (*q*). Moreover, every registered charge operates to confer on the chargee, either expressly or by implication, a legal estate, namely, a term or sub-term (*r*). Again, though Rule 160 of the Rules of 1903 is re-enacted by new Rule 142, Form 45 prescribed by the former rule differs materially from Form 46 prescribed by the latter rule. Form 45 contemplates the creation of an annuity for years or for the life of the annuitant, whereas Form 46 allows only the creation of an annuity in perpetuity or for a term of years absolute from the date of the charge. The reasons for these changes are (1) that only "legal estates" can be registered under the new Act (*s*); (2) that "registered dispositions" (*t*) can take effect as such only where they transfer or create a "legal estate" (*u*); and (3) that a rentcharge can constitute a "legal estate" only where it is a rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute (*v*). The new Act expressly empowers the proprietor of registered land to grant an annuity or a rentcharge in possession, in the case of freehold land, either perpetual or for a term of years absolute (*w*), and, in the case of leasehold land, to the extent of the registered estate (*x*); and, where the rentcharge is perpetual, the grantee will have all the powers and

(*p*) Only legal estates are capable of being registered under the L. R. Act: see sect. 2, above, p. 467.
(*q*) L. R. Act, s. 25 (1), above, p. 487; s. 26.
(*r*) *Ib.*, s. 27, above, p. 488.
(*s*) *Ib.*, s. 2, above, p. 467.
(*t*) Above, p. 482.
(*u*) L. R. Act, s. 18 (4), above, p. 484; s. 21 (4).
(*v*) L. P. Act, s. 1 (2) (b), above, p. 98.
(*w*) L. R. Act, s. 18 (1) (b), above, p. 483.
(*x*) *Ib.*, s. 21 (1) (b).

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remedies for the recovery thereof conferred by the Property Act (*y*). The rentcharge will be an "interest created by a disposition by the proprietor" and must be duly completed by registration and be noted on the register (*z*).

Equitable rentcharges.

Where the proprietor of registered land wishes to create thereout a rentcharge capable of existing only as an "equitable interest," *e.g.*, a jointure rentcharge in favour of his wife, if she shall survive him, during the remainder of her life, he can do so only by an "unregistered dealing" (*a*), and the rentcharge will take effect as a "minor interest" and be capable of being overriden by registered dispositions for valuable consideration (*b*).

Treatise, p. 1155 and nn. (*n*), (*o*) and (*p*). Reservation of rentcharge.

Sect. 82 of the Act of 1875 is not re-enacted, but new Rule 40, replacing Rule 43 of the Land Transfer Rules, 1908, provides for the entry in the register of incumbrances, conditions, and other burdens (including fee farm grants, or other grants reserving rents or services) to which the land may be subject (*c*). The proprietor of registered land is now expressly empowered, in the case of freehold land, to transfer the fee simple in possession of the registered land or any part thereof, subject to the creation thereout, by way of reservation, in favour of any person, of an annuity or a rentcharge in possession (either perpetual or for a term of years absolute) (*d*), and, in the case of leasehold land, to transfer the registered land or any part thereof subject to a reservation to any person of an annuity or rentcharge in possession (to the extent of the registered estate) (*e*).

Treatise, pp. 1155, 1156 and nn. (*r*), (*s*) and (*u*) to (*z*).

The effect, as stated in this passage of the Treatise, of the enactments and rules referred to in notes (*r*) and (*s*) thereto, is

(*y*) L. P. Act, s. 121, above, p. 214, replacing sect. 44 of the C. Act, 1881.

(*z*) See L. R. Act, s. 19 (2), above, p. 484; s. 22 (2). It is thought that the enactments and rules replacing those referred to in n. (*m*) to this passage of the Treatise (namely, L. R. Act, s. 33, and L. R. Rules, 163 to 166) will not apply to a registered legal rentcharge.

(*a*) L. R. Act, s. 101 (1), above, p. 525.

(*b*) *Ib.*, s. 101 (2).

(*c*) See also L. R. Rules, 41 ("Adverse easements"), which rule is new.

(*d*) L. R. Act, s. 18 (1) (d), above, p. 483.

(*e*) *Ib.*, s. 21 (1) (c). And see L. R. Rules, 107, 108, replacing L. T. Rules, 1903, rr. 130, 131.

reproduced by the corresponding enactments in the Registration Act (*f*). Rule 254 of the Land Transfer Rules, 1903, is re-enacted by new Rule 251, with the addition of the words "including the appropriate rights and interests which, had there been a conveyance of the land or manor, would, under sect. 62 of the Law of Property Act, 1925, have passed therewith." The new rule, even if not strictly within the powers of the rule-making section (*g*) of the new Act, does no more than give effect to the sections (*h*) of the new Act, which provide that the general words implied in conveyances by the Property Act (*i*) shall apply, so far as applicable thereto, to dispositions of a registered estate. Hence it is not necessary to insert words of conveyance in a disposition, in order to incorporate these implied general words, though there may be cases in which words should be inserted in the disposition excluding or modifying their application.

"Rights appendant and appurtenant."

Substantially the whole of these passages of the Treatise is superseded by the provisions of the Registration Act conferring upon the "proprietor" (*k*) power to effect, by means of a "registered disposition" (*k*), practically every kind of disposition which would be competent to an absolute owner of unregistered land, subject only to the restriction that no estate other than a "legal estate" (*l*) is capable of being disposed of or created (*m*). Where, in exercise of the power so conferred, a legal estate is *reserved* to any person (*n*), the disposition need not be executed by the grantee in order to make the reservation effectual (*o*).

Treatise, pp. 1156 to 1159.

"Creation of leases and of easements or other rights over registered land."

"Searches."

"Reservation of an easement or other rights over registered land."

It is now provided that the "proprietor" (*p*) may in any "registered disposition" (*p*) *or other instrument* (*q*) by cove-

Treatise, p. 1159 and nn. (*m*) and (*o*).

"Restrictive conditions

(*f*) See L. R. Act, ss. 5 to 7, 9 to 12, above, pp. 477, 478; ss. 20, 23, above, pp. 485, 486.
(*g*) L. R. Act, s. 144, replacing L. T. Act, 1875, s. 111, and L. T. Act, 1897, s. 22 (2), (6).
(*h*) L. R. Act, ss. 19 (3), 22 (3), above, pp. 485, 487.
(*i*) L. P. Act, s. 62, replacing C. Act, 1881, s. 6, above, p. 224.
(*k*) Above, p. 482.
(*l*) L. P. Act, s. 1, above, p. 97.
(*m*) L. R. Act, ss. 18, 21, above, pp. 483, 486. "Equitable interests" in registered land can be conveyed or created only by unregistered dispositions: L. R. Act, s. 101, above, p. 525.
(*n*) See L. R. Act, s. 18 (1) (d), above, p. 483; s. 21 (1) (c).
(*o*) L. P. Act, s. 65, above, p. 224.
(*p*) See above, p. 482.
(*q*) That is, apparently, an unregistered instrument.

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affecting registered land," &c.

nant, condition, or otherwise, impose or make binding, so far as the law permits, any obligation or reservation with respect to (amongst other things) the building on or other user of the registered land or any part thereof in like manner as if the proprietor were entitled to the registered land for his own benefit (*r*). He may also accept for the benefit of the registered land the benefit of any restrictive covenant or provision (affecting other land, whether registered or not) in like manner and to the same extent as if he were legally and beneficially entitled to the registered estate for his own benefit free from incumbrances (*s*). Entries are to be made on the register in the prescribed manner (*t*) of all obligations and reservations imposed by the proprietor, and of all obligations and reservations acquired by him for the benefit of the registered estate (*u*). A disposition by the proprietor will take effect *subject* to any such obligation or reservation imposed upon the land disposed of, if it be protected by way of notice on the register at the date of the registration or entry of notice of the disposition (*v*), and *free* therefrom, if it be not so protected (*w*). Rule 153 of the Land Transfer Rules, 1903, and Form 41 in the First Schedule to those Rules are replaced by new Rule 135 and Form 43. The old Form merely provided for adding at the end of the transfer the words "subject to the following restrictive conditions, namely" (specifying them). The new Form provides for adding at the end of the transfer "And C. D." (that is, the transferee) "hereby covenants with A. B." (the transferor) "for the benefit of the remainder of the land comprised in the above title number as follows, namely" (specifying the restrictions). A transfer in this form must be executed by both parties. Where this form is used no separate deed of covenant will be required. Rule 223 of the Rules of 1903 is replaced by new Rule 212 (*x*).

"Creation of new restrictions."

Treatise, pp. 1160 and nn. (*q*) and (*r*).

"Removal from the register of restrictive conditions."

The provisions here referred to of sect. 84 of the Act of 1875 (*y*) are superseded by sub-sect. (3) of sect. 50 of the new Act (*z*), which provides that where a restrictive covenant is

(*r*) L. R. Act, s. 40 (1), above, p. 494.
(*s*) *Ib.*, s. 108, above, p. 530.
(*t*) L. R. Rules, 212, above, p. 494.
(*u*) L. R. Act, s. 40 (3), above, *ib.* See also s. 50, above, p. 500.
(*v*) *Ib.*, s. 52 (1), above, p. 501.
(*w*) *Ib.*, s. 59 (6), above, p. 504. (*x*) Above, p. 494.
(*y*) Rule 17 of the L. T. Rules, 1903, is replaced by L. R. Rules, 16.
(*z*) Above, p. 501.

discharged or modified by an order under the Property Act (*a*), or otherwise, or the Court refuses to grant an injunction for enforcing the same, the entry in the register shall either be cancelled or reference made to the order or other instrument and a copy of the order, judgment, or instrument shall be filed at the registry. The words "or otherwise" would include a release by all the parties entitled to the benefit of the restrictive covenant, and "instrument" would include the document effecting such release.

Treatise, p. 1160 and nn. (*u*) and (*x*). "Joint registered proprietors."

The enactments referred to in note (*u*) to this passage of the Treatise are not re-enacted. The enactments and rules referred to in note (*x*) are replaced by sect. 58 (3) of the Registration Act and new Rules 213 and 214.

Treatise, pp. 1160, 1161 and nn. (*y*), (*a*), (*b*), (*d*), (*g*) and (*h*). "Corporation registered as proprietor." "Transfer to a corporation."

Rule 256 of the Land Transfer Rules, 1903, is replaced by new Rule 259 ("Evidence required on registration of a corporation, &c."), with a proviso applicable where a company is registered for profit under the Companies Acts. Rule 41 of the Land Transfer Rules, 1908, is replaced by new Rule 39 ("Restraint on alienation"), with a proviso applicable in the case of a married woman without power of anticipation. Rule 144 of the Rules of 1903 is re-enacted by new Rule 121 ("Transfer to a company or other corporation"), with a proviso applicable where a company is incorporated for profit under the Companies Acts. The provisions, referred to in the text of this passage, of Rule 146 of the Rules of 1903, are re-enacted by sub-rules (1) and (4) of new Rule 123 ("Transfer when necessary to comply with law of mortmain or charitable uses"). The enactments referred to in notes (*g*) and (*h*) are considered hereafter (*b*).

Treatise, pp. 1161, 1162 and nn. (*o*), (*r*), (*t*), (*x*) and (*y*). "Charity lands registered." L. R. Rules, 60 to 62.

Rules 83 to 86 of the Land Transfer Rules, 1903, relating to "Land held for Charitable Uses," are replaced, with substantial alterations, by new Rules 60 to 62, relating to the same subject-matter. New Rule 60 prescribes the persons to be registered as proprietors of land belonging to a Charity or Foundation which cannot be sold without the consent of the Charity Commissioners or the Board of Education, and requires that in every case in which land is registered under this rule a restriction in

(*a*) L. P. Act, s. 84, above, p. 231. (*b*) Below, p. 780.

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Form 12 in the Schedule to the new Rules shall be entered in the register. New Rule 61 prescribes the procedure to be adopted where an application is made for the registration of any land and in the opinion of the Registrar it is doubtful whether the land can be sold without the consent of the Charity Commissioners, or of the Board of Education, or not. New Rule 62 provides that, if the Charity Commissioners or the Board of Education certify by an order under their seal that any land may be sold without their consent, or may be sold without their consent so long as a particular condition is satisfied, the Registrar may accept such certificate as conclusive evidence that a restriction in Form 12 need not be entered against the title or that a conditional restriction only need be entered, or that if a restriction in Form 12 is already entered it may be removed or suitably modified. Rule 256 of the Rules of 1903 and Rule 41 of the Rules of 1908 are, as we have seen (*c*), replaced respectively by new Rules 259 and 39. Rule 145 of the Rules of 1903 is replaced, with some modifications, by new Rule 122 ("Transfer for charitable uses"). Rule 146 of the Rules of 1903 is, as we have seen (*d*), replaced by sub-rules (1) and (4) of new Rule 123.

Treatise, pp. 1162, 1163. "Effect of a registered disposition which if unregistered would be void."

The provisions of sect. 95 of the Act of 1875 ("Establishment of adverse title to land") and of sect. 7 of the Act of 1897 ("Right to indemnity in certain cases") are replaced by the provisions of the Registration Act relating to "Rectification of Register and Indemnity" (*e*). Sub-sect. (3) of sect. 82 of that Act (*f*) provides that the register shall not be rectified, except for the purpose of giving effect to an "overriding interest" (*g*), so as to affect the title of a proprietor who is in possession, unless (amongst other things) the *immediate* disposition to him was void, or the disposition to any person through whom he claims *otherwise than for valuable consideration* was void. It seems, then, that a *purchaser* who has taken possession under a "registered disposition" (*h*) of registered land will be concerned to see only that *that* disposition is valid

(*c*) Above, p. 779.
(*d*) Above, p. 779.
(*e*) L. R. Act, Part VII., ss. 82 to 85, above, Part VIII., Chapter VIII.
(*f*) Above, p. 513.
(*g*) L. R. Act, s. 70, above, p. 468.
(*h*) Above, p. 482.

and will not be affected by the invalidity of any *prior* disposition in the chain of title. If so, an intending purchaser from a proprietor, against whose title no restriction is entered on the register, *may*, in certain cases, be concerned to inquire into the proprietor's powers of disposition, *e.g.*, where the proprietor is a corporation or the land is held for charitable uses. It is thought, however, that he would be precluded by sect. 110 of the Registration Act from making any such inquiries, unless the contract contained a stipulation to the contrary (*i*). The real protection of a purchaser in such a case appears to lie in the fact that, if a restriction *ought* to have been entered on the register, it almost certainly would have been. If a restriction *is* entered, it must, of course, be complied with. A proprietor of any registered land or charge claiming *in good faith and for value* under a *forged* disposition will, where the register is rectified, be deemed to have suffered loss by reason of such rectification, and will be entitled to be indemnified accordingly (*k*).

Treatise, p. 1163 and n. (*n*). "Protection of persons claiming under a *transfer* of a charge made by a proprietor entitled under a void disposition."

The enactment in the First Schedule to the Act of 1897, which is referred to in this passage of the Treatise, is re-enacted by sect. 33 (3) of the Registration Act.

Treatise, p. 1164 and nn. (*p*) and (*r*). "Undivided share in land; mines apart from surface."

An undivided share in land is not "land" within the meaning of the Consolidation Acts (*l*), and cannot be registered (*m*). The enactments referred to in note (*p*) to this passage of the Treatise are not re-enacted, but "land" in the Registration Act includes mines and minerals, whether or not held with the surface, and buildings or parts of buildings (whether the division is horizontal, vertical, or made in any other way). Rules 71 to 76 of the Land Transfer Rules, 1903, are re-enacted, with some modifications, by new Rules 50 to 55 (*n*). Rule 77, relating to undivided shares, of the former Rules is not re-enacted. The provisions, referred to in this passage, of sect. 24 of the Act of 1897, are replaced by the proviso to sub-sect. (1) of sect. 120 of the Registration Act (*o*).

(*i*) See L. R. Act, s. 110 (2), above, p. 747.

(*k*) L. R. Act, s. 83 (4) (5) (a). This appears to overrule the decision in *A.-G.* v. *Odell*, (1906) 2 Ch. 47, cited Treatise, p. 1164, n. (*o*).

(*l*) See Table of Definitions, above, Part I., Chapter VII.

(*m*) See above, p. 472.

(*n*) New Rule 50 expressly excludes an undivided share.

(*o*) Above, p. 773.

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Treatise, p. 1164 and nn. (*s*) and (*t*). "Copyholds and customary freeholds."

The enactments and rule referred to in notes (*s*) and (*t*) to this passage are not re-enacted, being plainly inapplicable since the abolition of copyhold and customary tenure (*p*).

Sect. 82 of the Act of 1875 is not re-enacted. Rule 71 of the Rules of 1903 is replaced by new Rule 50.

Treatise, p. 1165 and n. (*x*). "Manor; seignory."

Treatise, pp. 1165 to 1168. "1. Purchase from an incumbrancer, prior to first registration with absolute title, not registered as proprietor of the incumbrance."

The case dealt with in this passage of the Treatise is that of a sale in exercise of his power of sale by the holder of a legal mortgage (1) affecting land registered with an absolute title, (2) created before the first registration of the land, (3) *entered in* the register at the time of such registration (*q*), and (4) whereof the holder is *not* registered as the proprietor. First registration of land, whether freehold or leasehold, takes effect subject to any incumbrances *appearing on* the register (*r*), as does also any "registered disposition" (*s*) of the registered land (*t*). In such a case the "registered estate" (*u*) is vested in the "proprietor" (*u*), that is, the mortgagor or the person deriving title under him (*v*), and the estate of the vendor is a mortgage term or charge by way of legal mortgage created by or under the Property Act (*w*), which has priority to the registered estate (*v*). It is thought, therefore, that sect. 110 of the Registration Act (*x*) can have no application to such a sale, and that the investigation of the title will be conducted in the same manner as if the land were not registered. Moreover, the subject-matter of the contract being a mortgage term, sect. 42 (4) (i) of the Property Act (*y*) will apply, and the contract will be deemed to extend to the legal estate (that is, the fee simple or the leasehold reversion) if the vendor has power to convey it. If the land were unregistered, the conveyance by the vendor would operate to vest the legal estate in the purchaser, and the mortgage term and any subsequent mortgage

(*p*) See above, Part II., Chapter II.
(*q*) See L. R. Rules, 40, re-enacting L. T. Rules, 1908, r. 43.
(*r*) L. R. Act, ss. 5, 9, above, pp. 477, 478.
(*s*) Above, p. 482.
(*t*) L. R. Act, ss. 20, 23, above, p. 486.
(*u*) Above, p. 482.
(*v*) L. R. Act, s. 69 (1), above, p. 479.
(*w*) Above, Part III., Chapter III., Sections i. to iv.
(*x*) Above, p. 747, superseding L. T. Act, 1897, s. 16; but as to the application of sect. 110 of the L. R. Act when the holder of the incumbrance has been registered as the proprietor thereof, see below, p. 785.
(*y*) Above, p. 140.

term or charge would merge (*z*); but, in the case of registered land, the legal estate can be obtained only by means of registration, being vested in the proprietor for the time being without the necessity of any conveyance (*a*). Possibly, if the vendor were to convey by an unregistered assurance, the conveyance would operate to vest in the purchaser an equitable estate corresponding to the registered estate, or, in other words, to create a "minor interest" (*b*), to which the proprietor would be bound to give effect by a registered disposition, or to which, failing such a disposition, the registrar would be bound to give effect, as if the transaction had been effected by a registered disposition (*c*). Apart from this mode of carrying out the transaction, it appears that the purchaser can obtain the right to be registered as proprietor only in one of the three ways suggested in the text (*d*), namely, (1) by obtaining a transfer from the proprietor, (2) by the vendor procuring himself to be registered as proprietor of the incumbrance, or (3) by proceedings under new Rule 131 (*e*). As regards (2), the position in regard to the enactments referred to in connection with this alternative (*f*) is as follows:—Sects. 25 to 27 of the Act of 1875 and sub-sects. (1) and (2) of sect. 9 of the Act of 1897, relating to the powers of the proprietor of a registered charge, are replaced by sub-sects. (1), (4) and (5) of sect. 34 of the Registration Act (*g*), whereof sub-sect. (1) provides that, subject to any entry on the register, the proprietor of a charge shall have and may exercise all the powers conferred by law on the owner of a legal mortgage (*h*); sub-sect. (4) provides that a sale by the Court or under the power of sale shall operate and be completed by registration in the same manner, as nearly as may be (but subject to any alterations in the register affecting the priority of the charge), as a transfer for valuable consideration by the proprietor of the land *at the time of the registration of the*

(*z*) See L. P. Act, ss. 88 (1) and 89 (1), above, pp. 123, 125.
(*a*) L. R. Act, s. 69 (1), above, p. 479.
(*b*) See L. R. Act, s. 101, above, p. 525.
(*c*) See L. R. Act, s. 103, above, p. 527.
(*d*) Treatise, p. 1167.
(*e*) Replacing r. 151 of the L. T. Rules, 1903: see Treatise, p. 1167, n. (*r*). Rule 152 mentioned in the same note is not re-enacted, but is superseded by L. R. Act, s. 64 (4), above, p. 508, replacing L. T. Act, 1897, s. 8 (4) (see Treatise, p. 1168, nn. (*t*) and (*z*)), and by new Rule 266.
(*f*) See Treatise, p. 1167, n. (*q*). See also *ib.*, p. 1168, n. (*z*).
(*g*) Above, p. 491.
(*h*) See above, Part III., Chapter III.

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charge would have operated or been completed, and, as respects the land transferred, the charge and all incumbrances and entries inferior thereto shall be cancelled; and sub-sect. (5) provides for the merger of the express or implied term or sub-term conferred by the charge (*i*). Sect. 22 (6) (c) of the Act of 1897 gave power to make rules for adapting to sub-mortgages and to incumbrances prior to registration the provisions of the Act of 1875 with regard to charges, and is replaced by sect. 144 (1) (viii) of the Registration Act conferring the like power. The rules made under the former power, namely, Land Transfer Rules, 1903, Rules 175 to 181 are re-enacted almost *verbatim* by the rules made under the latter power, namely, new Rules 160 to 166. The short effect of new Rules 160 to 162 is that a person entitled to an incumbrance created prior to first registration may be registered as proprietor of such incumbrance and from thenceforward his position will be assimilated to that of the holder of a registered charge. On such registration a certificate of incumbrance will be prepared and issued to him, and may be dealt with in the same manner as a charge certificate, and must be produced on the same occasions as a charge certificate (*k*). As regards searches, it has already been suggested (*l*) that on the purchase of registered land the only searches necessary, outside the register itself, are for local land charges and, in some cases, for bankruptcies prior to the commencement of the Registration Act, though searches may be necessary against the vendor in respect of his unregistered mortgage term.

Treatise, p. 1168. "Searches."

Treatise, pp. 1168, 1169. "2. Purchase from a mortgagee selling under a mortgage prior to registration with a possessory title."

In this case the same principles will apply as in the first case, except that, the land being registered with possessory title, the title must be investigated to estates or interests excepted from the effect of registration. As the legal estate is vested in the proprietor of the land, although the land was registered with a possessory title only (*m*), the vendor cannot, it is thought, confer a title under which application could be made for *first* registration, and the legal estate, whether the land be situate in a compulsory area or not, can be acquired only under a registered disposition from the proprietor or under a disposition having

(*i*) See L. R. Act, s. 27, above, p. 488.
(*k*) L. R. Rules, 166, replacing L. T. Rules, 1903, r. 181.
(*l*) Above, p. 765.
(*m*) See L. R. Act, s. 69 (1), above, p. 479.

the like effect (*n*). An unregistered assurance by the vendor would operate only in equity, though effect might be given to it in the manner already suggested (*o*).

Treatise, pp. 1169 to 1172.

"3. Purchase from an incumbrancer, prior to first registration, registered as proprietor of the incumbrance."

"4. Purchase from a chargee subsequent to registration."

It is thought that these two cases are practically identical and may be considered together for the following reasons:—In the Registration Act "'registered charge' includes a mortgage or incumbrance registered as a charge under this Act" (*p*). Sub-sect. (1) of sect. 144 of the Act (being the section under which the new Rules were made) authorises the making of rules for the several purposes therein mentioned, including rules "for adapting to sub-mortgages and to incumbrances registered prior to registration the provisions of this Act with regard to charges" (*q*). Sub-sect. (2) of the same section provides that any rules made in pursuance of that section shall be of the same force as if enacted in the Act. It seems to follow that any incumbrance which is registered as a charge under any rule is so registered under the Act within the meaning of the definition of "registered charge." Now the effect of new Rules 160 to 166, which are grouped under the heading "Adaptation to Incumbrances prior to Registration and to Sub-mortgages of the provisions of the Act with regard to Charges," appears clearly to be that, where under Rule 160 a person entitled to an incumbrance created prior to first registration is registered as the proprietor of such incumbrance, the incumbrance is a "registered incumbrance" with all the incidents of a "registered charge," or, in other words, is "an incumbrance registered as a charge" within the meaning of the definition of "registered charge." If the above reasoning is sound, it appears to follow that the incidents of a "purchase from an incumbrancer, prior to first registration, registered as proprietor of the incumbrance" and of a "purchase from a chargee subsequent to registration" will be practically identical. What are thought to be the incidents common to these two cases must now be stated. The provisions of sect. 110 of the Act (*r*) will apply, for that section applies not only to a sale by the proprietor of the land, but also to a sale by the proprietor of a charge in exercise of his power of sale (*s*). The vendor will be able to

(*n*) See *ib.*, s. 34 (4), above, p. 491.
(*o*) Above, p. 783.
(*p*) L. R. Act, s. 3 (xxiii).
(*q*) *Ib.*, s. 144 (1) (viii).
(*r*) Above, p. 747.
(*s*) See L. R. Act, s. 110 (5), (6).

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comply with the requirements of sub-sect. (1) of that section as to furnishing an authority to inspect the register and otherwise, because of his interest as the registered proprietor of a charge (*t*). No investigation of the title off the register will be necessary, except in respect of "matters excepted from the effect of registration" (*u*), nor will the purchaser be concerned with any charges or incumbrances registered or protected on the register which are to be discharged or overridden at or prior to completion (*v*). The purchaser will not be concerned to see that the power of sale has become exercisable (*w*). On the completion of the purchase the transfer by the vendor will operate and be completed by registration in the same manner as a transfer for valuable consideration by the proprietor of the land at the time of the registration of the charge would have operated or been completed, and, as respects the land transferred, the charge and all incumbrances and entries inferior thereto will be cancelled, and the express or implied term or sub-term created by the incumbrance or charge will merge (*x*). The charge certificate or certificate of incumbrance will be handed over on completion (*y*). No assurance other than the registered transfer will be necessary or, as a general rule, valid (*z*).

Treatise, pp. 1175, 1176.

"Remedies conferred by registered charges on registered land."

The law as stated in this passage of the Treatise is radically altered. In the first place, only "legal estates" (*a*) are capable of being registered (*b*). Secondly, the "proprietor" (*c*), whether he be registered with absolute, possessory, qualified or good leasehold title, always has the legal estate (*d*). Thirdly, a registered charge always confers on the chargee, expressly or by implication, a legal estate, namely, a term of years absolute or, in the case of leasehold land, a sub-term of years absolute (*e*). Fourthly, subject to any entry on the register to the contrary,

(*t*) L. R. Act, s. 112.
(*u*) *Ib.*, s. 110 (2).
(*v*) *Ib.*, s. 110 (1).
(*w*) L. P. Act, s. 104 (2).
(*x*) L. R. Act, s. 34 (4), (5), above, p. 491. See also L. R. Rules, 148, above, p. 492.
(*y*) See L. R. Act, s. 110 (6), above, p. 748.
(*z*) *Ib.*, s. 39, above, p. 493.
(*a*) Above, p. 97.
(*b*) L. R. Act, s. 2, above, p. 467.
(*c*) Above, p. 482.
(*d*) L. R. Act, s. 69 (1), above, p. 479.
(*e*) *Ib.*, s. 27, above, p. 488; s. 33 (4), (5), above, p. 490; s. 44, above, p. 497.

the proprietor of a charge has and may exercise *all* the powers conferred by law on the owner of a legal mortgage (*f*). In short, the proprietor of a registered charge on registered land is substantially in the same position and has the same rights, powers and remedies as a legal mortgagee of unregistered land. It follows that practically the whole of this passage of the Treatise is superseded. For example, a registered chargee has, *in all cases*, the *legal* right of entry into possession or receipt of the rents and profits of the land charged. Moreover, if by any previous *unregistered* disposition the proprietor of the registered land should have purported to convey his legal estate, the interest created by such disposition would be a "minor interest," taking effect only in equity and capable of being overridden by registered dispositions for valuable consideration (*g*), and a disposition by way of charge to secure money lent *is*, when registered, a "registered disposition" (*h*) for valuable consideration.

Treatise, pp. 1175, 1176 and nn. (*r*), (*s*), (*u*), (*x*), (*y*), (*z*), (*b*), (*e*) and (*f*).

The position in regard to the enactments and authorities cited in the notes to this passage of the Treatise is as follows:—Sects. 22 to 28 of the Act of 1875 and s. 9 of the Act of 1897, so far as they respectively relate to registered charges, are superseded by sects. 25 to 36 of the Registration Act (*i*). Rule 164 of the Land Transfer Rules, 1903, is replaced by new Rule 147 ("Entry to be made in register on foreclosure"), without modification, except that the concluding words of the old Rule, "the certificate of charge, and, if required by the registrar, the land certificate, shall accompany the application," are replaced by the words "The charge certificate shall accompany the application." The reason for this is that, under the new Act, the land certificate is retained in the registry on the creation of a registered charge (*k*). The effect of an order for foreclosure, when registered, is expressly provided for by sect. 34 (3) of the Act (*l*). A registered chargee *does* obtain an estate in the land, and the decision to the contrary in *Capital and Counties Bank, Ltd.* v. *Rhodes* is superseded, as is also the opinion referred to in

(*f*) L. R. Act, s. 34 (1), above, p. 491. See also L. R. Rules, 141, 148, above, p. 492.
(*g*) L. R. Act, s. 101, above, p. 525. (*h*) Above, p. 482.
(*i*) Above, Part VIII., Chapter IV., Section iv.
(*k*) L. R. Act, s. 65, above, p. 508.
(*l*) Above, p. 491.

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note (*b*) to this passage. Sect. 49 of the Act of 1875 is replaced, with material alterations, by sect. 101 of the new Act (*m*).

Treatise, pp. 1175, 1176 and nn. (*j*), (*m*) and (*n*). "Can a chargee sue on covenants in leases?" "Chargee in possession has no estate."

This passage also of the Treatise is superseded. For, inasmuch as a registered chargee has an express or implied term or sub-term and all the remedies of the owner of a legal mortgage (*n*), it is clear that he *is* an assignee of part of the reversion and so entitled to enforce the covenants and right of re-entry contained in any lease of the registered land (*o*). Moreover, a registered chargee who has held possession for twelve years, without acknowledgment of the mortgagor's title or right of redemption, obtains a title under the Statutes of Limitation in the same way as if the land were not registered (*p*), and, on becoming so entitled, he may, subject to any entry to the contrary on the register and subject to the right of any persons appearing on the register to be prior incumbrancers, execute a declaration in the prescribed form that the right of redemption is barred, and thereupon he will be entitled, subject to furnishing any evidence which may be prescribed, to be registered as proprietor of the land, with the same consequences as if he had been a purchaser for valuable consideration of the land under the power of sale (*q*). There will, accordingly, be no question of applying for the rectification of the register (*r*).

L. R. Act, s. 104.

The powers of a registered chargee, when in possession, to grant leases under sect. 99 of the Property Act and the effect of leases so granted are made clear by sect. 104 of the Registration Act, which provides as follows:—

Protection of leases granted under statutory powers by persons

104. All leases at a rent for a term of years absolute authorised by the powers conferred by the Law of Property Act, 1925, or the Settled Land Act, 1925, or any other statute (whether or not as extended by any instrument) may be granted in the name and on behalf of the

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(*m*) Above, p. 525.
(*n*) Above, p. 786.
(*o*) Sects. 10 and 18 of the C. Act, 1881, are replaced respectively by sects. 141 and 99 of the L. P. Act.
(*p*) See L. R. Act, s. 75, above, p. 469.
(*q*) *Ib.*, s. 34 (2), above, p. 491.
(*r*) The provisions as to rectification of sect. 95 of the L. T. Act, 1875, and sect. 12 of the L. T. Act, 1897, are superseded by the provisions of Part VII. of the L. R. Act, above, Part VIII., Chapter VIII.

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proprietor by any other person empowered to grant the same, and shall be valid at law or in equity (as the case may require) and shall be protected by notice on the register and registered in the same cases, in like manner and with the same effect as if the lease had been granted by the proprietor of the land, and without prejudice to any priority acquired by the exercise of the power; but nothing in this section shall authorise any person granting any lease in the name of the proprietor to impose (save in regard to the usual qualified covenant for quiet enjoyment) any personal liability on such proprietor.

other than registered proprietor and restriction on power.

Having regard to the legal estate and legal remedies now conferred upon a registered chargee of registered land (*s*), it would appear to be unnecessary to resort to either of the methods suggested in this passage of the Treatise for making a mortgage, or to take a mortgage of registered land otherwise than by means of a registered charge. A chargee of registered land can no longer stipulate for possession of the land certificate, as it must be retained in the registry (*t*). No restriction against "registered dispositions" (*u*) by the "proprietor" (*u*) appears to be necessary, as any such disposition would necessarily take effect subject to the registered charge. A registered charge subsequent to the first confers a *new* legal estate (by term or sub-term) on the chargee and in no way impairs the legal estate (by term or sub-term) of the first chargee.

Treatise, pp. 1177, 1178. "Mortgage of registered land by transfer." "Mortgage by registered charge coupled with an unregistered mortgage of the estate."

A mortgage of land registered with a qualified or possessory title will be effected by a registered charge in the usual way, except that the mortgagee must see that all estates, rights, interests and powers excepted from the effect of registration are got in, released, or otherwise bound by the charge.

Treatise, p. 1179. "Mortgages of land registered with a qualified or possessory title."

The whole of this passage appears to be superseded by the fact that every registered charge of freehold land now confers upon the chargee an express or implied term of years (*v*). This gives the chargee a legal estate, and it is, of course, quite unnecessary to enter in the register any notice of the express or implied term. Entry of the charge in the charges register is all that is required. It is not, therefore, proposed to consider in detail the statements in this passage of the Treatise in regard to the effect of entering notice of a lease (*w*).

Treatise, pp. 1179 to 1183. "Registered charge coupled with an unregistered mortgage by demise for a long term."

(*s*) Above, p. 786.
(*t*) L. R. Act, s. 65, above, p. 508.
(*u*) Above, p. 482.
(*v*) See L. R. Act, s. 27.
(*w*) For the various enactments referred to in this passage of the Treatise and the enactments, if any, by which they are replaced, reference should be made to the Table, above, pp. 460 *et seq.*

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Treatise, pp. 1183 to 1185 and n. (*n*). "Sale followed by a mortgage of registered land."

In considering this passage of the Treatise it must be borne in mind (1) that the legal estate in the registered land is always in the registered proprietor for the time being (*x*) and cannot be conveyed by a disposition off the register or be acquired otherwise than by the registration as proprietor of the person seeking to acquire it; and (2) that the execution of a registered charge appears now to be the regular and all-sufficient mode of mortgaging registered land. It seems, therefore, that where a sale is to be combined with a mortgage to provide part of the purchase-money, the sequence of events should be (1) a transfer by the registered proprietor to the purchaser, (2) execution of the charge by the purchaser before registration of the transfer (*y*), and (3) delivery of both instruments at the registry for registration.

Treatise, pp. 1185 to 1188. "Sale and mortgage of unregistered land in compulsory registration district." L. R. Act, s. 123.

The difficulties arising in the case discussed in this passage of the Treatise have been removed by the provisions of sect. 123 of the Registration Act (*z*) and the rule made under that section. The effect of that section appears to be that on a "conveyance on sale" (*a*) or "assignment on sale" (*a*) of unregistered land situate in an area in which registration is compulsory, the conveyance or assignment vests the legal estate in the purchaser, subject to its being divested unless before the expiration of two months from the date thereof or of any authorised extension of that period the grantee or his successor in title or assign has applied to be registered as proprietor of the land. The following rule has been made under sub-sect. (2) of that section:—

L. R. Rules, 73.

Effect of dealings prior to first registration.

73.—(1) Pursuant to sub-section (2) of section 123 of the Act, it is hereby provided that any dealing with land which takes place between the date of a conveyance, grant, or assignment necessitating compulsory registration of land and the date of application to register, shall (subject to the provisions of sub-section (1) of the said section) take effect as if it had taken place after the date of first registration, which shall be effected as of the date of the application to register.

(2) Where a dealing is a charge or other incumbrance, capable of registration in the Charges Register of the title affected, the person for the time being entitled to it shall have power to lodge an applica-

(*x*) L. R. Act, s. 69 (1), above, p. 479.
(*y*) Under L. R. Act, s. 37, and L. R. Rules, 81, replacing L. T. Act, 1897, s. 9 (6), and L. T. Rules, 1903, r. 104.
(*z*) Above, p. 535.
(*a*) See L. R. Act, s. 123 (3), above, p. 536.

tion on behalf of the proper applicant for the first registration of the estate on which such charge or incumbrance has been created.

Procedure on sale and mortgage of unregistered land situate in compulsory registration district.

From the above-mentioned section and rule it appears that in the case of a sale of unregistered land situate in a compulsory registration district, where a mortgage is to be made to secure part of the purchase-money, the procedure will be as follows:—In readiness for the completion of the sale there will be prepared and engrossed, not only the conveyance or assignment on sale, but also a charge in Form 45 in the Schedule to the new Rules, with the modification prescribed in the Note to that Form. On the completion of the purchase, after payment of the purchase-money and execution and delivery by the vendor of the conveyance or assignment, the charge will be executed by the purchaser, and both the conveyance or assignment and the charge will be handed to the mortgagee who, subject to their being duly stamped, can then lodge an application on behalf of the purchaser for the first registration of the estate on which the charge has been created. Such registration will be effected as of the date of the application to register, and, when it has been effected, the charge will be registered and will take effect as if it had been executed after the date of first registration.

Mortgages off the register.

It should not be overlooked that, under sect. 106 of the Registration Act, the proprietor of any registered land may now, subject to any entry to the contrary on the register, mortgage, by deed or otherwise, the land or any part thereof in any manner which would have been permissible if the land had not been registered. The provisions of that section have already been considered (*b*).

(*b*) Above, Part VIII., Chapter X., p. 528.

Treatise, Vol. II., Chap. XXI., pp. 1189 to 1255.

SECTION XXI.

OF THE DEATH DUTIES (*a*).

Treatise, p. 1189. "The death duties."

THE expression "death duty" or "death duties," where it is used in any of the Consolidation Acts, means, unless the context otherwise requires, estate duty, succession duty, legacy duty, and every other duty leviable or payable on death (*b*).

Law in the main unaffected.

Saving of existing law by A. E. Act.

The law relating to death duties is, in the main, unaffected by any of these Acts. In particular, as regards the Administration Act, it is provided that nothing in that Act shall alter any death duty payable in respect of "real estate" (*b*) or impose any new duty thereon; render any "real estate" (*b*) liable to legacy duty or exempt it from succession duty; or alter the incidence of any death duties (*c*). There are, however, certain new provisions as to death duties to which attention must be called.

New provisions as to death duties.

L. P. Act, ss. 16 to 18.

L. R. Act, s. 73.

These provisions are contained in sects. 16 to 18 of the Property Act and sect. 73 (*d*) of the Registration Act. The latter section adapts to registered land the provisions of sects. 16 to 18 of the Property Act, as will be seen by comparing those provisions, as here printed, with the corresponding provisions, noted in the margin, of sect. 73 of the Registration Act.

Sects. 16 to 18 of the Property Act are as follows:—

Death Duties.

Liability for death duties.

L. R. Act, s. 73 (3).

16.—(1) A personal representative shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise.

Ib. (4).

(2) In every other case the estate owner (other than a purchaser who acquires a legal estate after the charge for death duties has

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(*a*) See Explanatory Note, above, p. 562.
(*b*) See Table of Definitions, above, Part I., Chapter VII.
(*c*) A. E. Act, s. 53 (3), above, p. 445, n. (*v*). See also L. P. Act, s. 16 (4) (5), below, p. 793.
(*d*) For sub-sects. (1), (2), (7), (8), (9), (15) and (16) of this section, see above, pp. 471, 472.

attached and free from such charge), shall be accountable for all the duties aforesaid which become leviable or payable in respect of his estate in the land or any interest therein capable of being overreached by his conveyance, being a conveyance to a purchaser made under the Settled Land Act, 1925 (*e*), or pursuant to a trust for sale (*f*).

(3) For the purpose of raising the duty, and the costs of raising the same, the personal representative or other person accountable as aforesaid shall have all the powers which are by any statute conferred for raising the duty. L. R. Act, s. 73 (10).

(4) Nothing in this Act shall alter any duty payable in respect of land, or impose any new duty thereon, or affect the remedies of the Commissioners of Inland Revenue against any person other than a purchaser or a person deriving title under him. Ib. (11).

(5) Notwithstanding that any duties are by this section made payable by the personal representative or other person aforesaid, nothing in this Part of this Act shall affect the liability of the persons beneficially interested or their respective interests in respect of any duty, and they shall accordingly account for or repay the same and any interest and costs attributable thereto to the said Commissioners or to the personal representative or other person accountable as aforesaid, as the case may require. Ib. (11).

(6) Nothing in this Part of this Act shall impose on a personal representative, tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position, as such, any liability for payment of duty, in excess of the assets (including land) vested in him or in the trustees of the settlement which may for the time being be available in his hands or in the hands of such trustees for the payment of the duty or which would have been so available but for his or their own neglect or default, or impose a charge for duties on leasehold land, or render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage. Ib. (14).

(7) The said Commissioners, on being satisfied that a personal representative or other person accountable has paid or commuted or will pay or commute all death duties for which he is accountable in respect of the land or any part thereof, shall, if required by him, give a certificate to that effect, which shall discharge from any further claim for such duty the land to which the certificate extends, and the production of such certificate to the land registrar or other proper officer shall be a sufficient authority to enable him to cancel any land charge registered in respect of the duty so far as it affects the land to which the certificate extends. Ib. (9).

Protection of purchasers from liability for death duties.

17.—(1) Where a charge in respect of death duties is not registered as a land charge (*g*), a purchaser of a legal estate shall take

(*e*) See S. L. Act, s. 72, above, p. 326.

(*f*) See L. P. Act, ss. 27 (1), 28 (1), as amended by L. P. Act, 1926, s. 7 and Schedule, above, pp. 170, 553. L. R. Act, s. 73 (1).

(*g*) See L. C. Act, ss. 10 (1), Class D (i), 13 (2), above, pp. 412, 406.

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free therefrom, unless the charge for duties attached before the commencement of this Act and the purchaser had notice of the facts giving rise to the charge.

L. R. Act, s. 73 (5).

(2) Where a charge in respect of death duties is not registered as a land charge, the person who conveys a legal estate to a purchaser, and the proceeds of sale, funds, and other property (if any) derived from the conveyance and the income thereof shall (subject as in this Act provided) be or remain liable in respect of and stand charged with the payment of the death duties the charge for which is overreached by the conveyance, together with any interest payable in respect of the same.

Ib. (6).

(3) Notwithstanding that any death duties may be payable by instalments, on a conveyance of a legal estate by way of sale exchange or legal mortgage all death duties payable in respect of the land dealt with and remaining unpaid shall, if the charge for the duties is overreached by such conveyance, immediately become payable and carry interest at the rate of four pounds per centum per annum from the date of the conveyance:

Provided that, where by reason of this subsection an amount is paid or becomes payable for duties and interest in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

Ib. (2).

(4) Except in the case of a conveyance to a purchaser, a conveyance shall take effect subject to any subsisting charge or liability for payment of the duties and interest, if any, notwithstanding that the charge for duties may not have been registered.

(5) This section does not apply to registered land.

Application of capital money in discharge of death duties.

18.—(1) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which any death duties may have become payable, and personal estate held on the same trusts as the proceeds of sale of land, being land held on

L. R. Act, s. 73 (12).

trust for sale in respect of which any such duties may have become payable, may, by the direction of the tenant for life, statutory owner, or trustee for sale who is accountable, and although the duty is only payable in respect of an interest which is or is capable of being overreached by a conveyance to a purchaser, be applied in discharging all or any of the duties aforesaid and the costs of discharging the same.

Ib. (13).

(2) Where the duties would not, except by virtue of the last subsection, be payable out of the capital money or personal estate aforesaid—

(a) the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or the trustees for sale by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid, or, where the land has been conveyed to a purchaser, would have been paid if the land had not been so conveyed;

(b) the interest of the person so liable, remaining subject to the settlement of the land or of the proceeds of sale, shall stand charged with the repayment of the instalments and the interest aforesaid;

(c) the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

Treatise, p. 1189. "The purchaser."

In Part I. (*h*) of the Property Act "purchaser" means a person who acquires an interest in or charge on property for money or money's worth, and in reference to a "legal estate" (*i*) includes a chargee by way of legal mortgage (*k*). In the Registration Act "purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee, or other person who for valuable consideration acquires any interest in land or in any charge on land (*k*); and "valuable consideration" includes marriage, but does not include a nominal consideration in money (*k*). But in sect. 73 of the Registration Act "purchaser" includes only a purchaser for money or money's worth (*l*).

Charge for death duties. 1. Unregistered land.

Any charge acquired by the Commissioners of Inland Revenue for death duties leviable or payable on any death which occurs after the commencement of the Land Charges Act (*m*) may be registered as a land charge of Class D in the register of land charges (*n*), if and when, but not until, it becomes a charge on the land (*o*); and will be void as against a purchaser of a legal estate in the land for money or money's worth, unless registered before the completion of the purchase (*p*).

2. Registered land.

For the purposes of sect. 59 of the Registration Act (*q*), which, by sub-sect. (2), provides for the registration of a land charge (other than a local land charge), where the land affected is registered, a land charge does not include an Inland Revenue

(*h*) Sects. 1 to 39.
(*i*) Above, Part III., Chapter I., p. 97.
(*k*) See Table of Definitions, above, Part I., Chapter VII.
(*l*) L. R. Act, s. 73 (15), above, p. 471.
(*m*) That Act does not, except as regards local land charges, apply to registered land. L. C. Act, s. 23, above, p. 423.
(*n*) L. C. Act, s. 10 (1), Class D (i), above, p. 412.
(*o*) *Ib.* (4), above, p. 413.
(*p*) *Ib.* 13 (2), above, p. 406.
(*q*) Above, p. 503.

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L. R. Act, s. 73 (7).

charge; but sub-sects. (7) and (16) (*r*) of sect. 73 of the Registration Act provide for entry on the register of notice of a charge for death duties which become payable or leviable after the commencement of that Act (*s*).

Protection of purchasers.

1. Unregistered land.

Where a charge in respect of death duties is *not* registered as a land charge, a "purchaser" (*t*) of a "legal estate" (*t*) will take free therefrom, unless the charge for duties attached before the commencement of the Property Act and the purchaser had "notice" (*t*) of the facts giving rise to the charge (*u*). Where a charge in respect of death duties *is* registered as a land charge, the purchaser will be entitled to require that the registration shall be cancelled free of expense to the purchaser (*v*).

2. Registered land.

A "registered disposition" (*w*) in favour of a "purchaser" (*w*) for money or money's worth operates to vest in him the estate or interest transferred or created free from all claims for death duties which become payable or leviable after the commencement of the Registration Act, notwithstanding that notice of a claim for death duties may be noted on the register (*x*).

Treatise, pp. 1189 to 1193.

Treatise, p. 1191 and n. (*s*).

"Legacy duty."

In case of intestacy.

§ 1.—OF PROBATE DUTY AND LEGACY DUTY.

In the case of persons dying after the commencement of the Administration Act the Statutes of Distribution are repealed (*y*). In the case of persons dying before such commencement legacy duty is payable on the clear residue (when devolving to one person) and on every share of the clear residue (when devolving to two or more persons) of the personal or moveable estate (other than leaseholds) of any deceased person, whether the title to such residue, or any share thereof,

(*r*) Above, p. 471.
(*s*) With respect to death duties which become leviable or payable before that date, see L. R. Act, s. 73 (16), above, p. 472, Treatise, Vol. II., Chapter XX., p. 1140.
(*t*) See Table of Definitions, above, Part I., Chapter VII.
(*u*) L. P. Act. s. 17 (1), above, p. 793.
(*v*) *Ib.*, s. 43 (1), above, p. 142.
(*w*) See Table of Definitions, above, Part I., Chapter VII.
(*x*) L. R. Act, s. 73 (1), (15), (16), above, p. 471.
(*y*) Above, p. 428.

accrues by virtue of any testamentary disposition, *or upon a partial or total intestacy* (*z*). Presumably, in the case of persons dying after such commencement partially or totally intestate, so much of "the residuary estate of the intestate" (*a*) as represents personal estate (other than leaseholds) will (subject to any exemptions) be liable to legacy duty.

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§ 2.—OF SUCCESSION DUTY, ACCOUNT DUTY, AND TEMPORARY ESTATE DUTY.

Treatise, pp. 1193 to 1221.

Sect. 24 of the Finance Act, 1925 (*b*), provides that, for the purposes of sect. 18 (*c*) of the Finance Act, 1894, and of sect. 58 of the Finance (1909—10) Act, 1910, a succession shall be deemed to arise on the happening of the death by reason of which the successor, or any person in his right or on his behalf, becomes entitled *in possession* to the succession or to the receipt of the income or profits thereof. This enactment has the effect of overruling the decision of the House of Lords in *Lord Advocate* v. *Macalister* (*d*) and restoring that in *Att.-Gen.* v. *Anderton* (*e*).

Treatise, pp. 1193 to 1195, n. (*q*). "First succession."

In the case of persons dying after the commencement of the Administration Act partially or totally intestate, so much of "the residuary estate of the intestate" (*f*) as represents real estate (including chattels real) will (subject to any exemptions) be liable to succession duty by virtue of a devolution.

Treatise, p. 1196. "Devise or descent."

Since the commencement of the Settled Land Act a power of sale or exchange (*g*) of the settled land is exercisable only by the tenant for life or statutory owner (*h*). It is thought that on a sale or exchange of settled land any claim for death duties is shifted to the purchase-money or the land taken in exchange (*i*).

Treatise, p. 1201. "Where settled lands are sold under a power of sale."

(*z*) Stamp Act, 1815 (55 Geo. 3, c. 184), Sched., Part iii.; Succession Duty Act, 1853 (15 & 16 Vict. c. 51), s. 19.
(*a*) A. E. Act, s. 33 (4), above, p. 442.
(*b*) 15 & 16 Vict. c. 36.
(*c*) See Treatise, pp. 1200, 1201, 1205.
(*d*) (1924) A. C. 586. (*e*) (1921) 1 K. B. 159.
(*f*) A. E. Act, s. 33 (4), above, p. 442.
(*g*) Partition, except in rare cases, is abolished. See above, p. 158.
(*h*) See S. L. Act, ss. 108, 109, above, p. 269.
(*i*) See Hanson, Death Duties, 631, 6th ed.

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Treatise, p. 1202. "Persons accountable for succession duty."

Persons primarily accountable for death duties.

A personal representative in whom land (including settled land and registered land) vests on a death (*k*) is accountable for all death duties which become leviable or payable on the death of the deceased in respect of the land which so vests or any interest therein (*l*). In every *other* case, that is, when the death, *e.g.*, of a jointress, renders land *other* than land which vests in the personal representative of the deceased liable to death duty, the "estate owner" (*m*) or "proprietor" (*m*) of such *other* land (other than a purchaser who acquires a "legal estate" (*m*) or "registered estate" (*m*) free from the charge for death duties) is accountable for all the death duties which become leviable or payable in respect of (a) the estate of the estate owner or proprietor in such *other* land, or (b) any interest therein capable of being overreached by his conveyance (*n*).

Limits of accountability.

But this accountability does not impose on a personal representative, tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position, as such, any liability for payment of duty in excess of the assets (including land) vested in him or in the trustees of the settlement which may for the time being be available in their or his hands for the payment of the duty, or which would have been so available but for his or their own default, or render a mortgagee or registered chargee liable in respect of any charge for duties which is not paramount to his security (*o*); nor affect the ultimate liability of the beneficiaries according to their respective interests (*p*).

Ultimate liability of beneficial interests unaffected.

Treatise, p. 1206. "Title conferring a new succession."

The case of *Att.-Gen.* v. *Cecil* (*q*) was applied and followed in *Att.-Gen.* v. *Assheton-Smith*, (1924) 2 K. B. 25.

Treatise, p. 1209 and n. (*q*).

In the case of a person dying after the commencement of the Administration Act, the powers of personal representatives to sell an equitable interest in remainder belonging to their testator or intestate will be those conferred upon them by that Act (*r*).

Land Transfer Act, 1897.

(*k*) A. E. Act, ss. 1, 3, above, pp. 432 *et seq.* There is nothing in the A. E. Act to prevent these sections applying to registered land.
(*l*) L. P. Act, s. 16 (1), above, p. 792; L. R. Act, s. 73 (3).
(*m*) See Table of Definitions, above, Part I., Chapter VII.
(*n*) L. P. Act, s. 16 (2), above, p. 792; L. R. Act, s. 73 (4).
(*o*) L. P. Act, s. 16 (6), above, p. 793; L. R. Act, s. 73 (14).
(*p*) *Ib.*, s. 16 (5), above, p. 793; L. R. Act, s. 73 (11).
(*q*) L. R. 5 Ex. 263.
(*r*) Above, Part VII.

The Settled Estates Act, 1877, is repealed (*s*) and not re-enacted. Special provision is now made for the protection from claims for death duties of purchasers of a legal estate in land, including settled land and registered land (*t*).

Treatise, p. 1215. "Sale under the Settled Estates Act."

It is thought that where, since the commencement of the Property Act, land is held on trust for sale, only a person of full age who is absolutely and beneficially entitled in possession to the whole of the proceeds of sale can elect to take the land *in specie* (*v*). Sect. 10 (3) of the Conveyancing Act, 1911, is repealed (*w*) and replaced by sect. 23 of the Property Act (*x*).

Treatise, p. 1216. "Sale under the Settled Land Act."

Treatise, p. 1216 and n. (*j*). "Election to take *in specie* lands assured on trust for sale."

Sect. 3 (6) of the Conveyancing Act, 1881, is repealed (*w*) and replaced, with amendments, by sect. 45 (4) of the Property Act (*y*).

Treatise, pp. 1217, 1218 and n. (*p*). "Payment of succession duty ought to be stated on the abstract."

§ 3.—OF ESTATE DUTY.

Treatise, pp. 1221 to 1255.

To the enactments mentioned in note (*m*) to this passage must be added the Finance Act, 1925 (15 & 16 Geo. 5, c. 36), ss. 22, 23, and Fourth Schedule, which gives the present rates of estate duty.

Treatise, p. 1221 and n. (*m*). "Estate duty."

The reference in sect. 22 (2) (a) of the Finance Act, 1894, to the Settled Land Act, 1882, should be replaced by a reference to the Settled Land Act, 1925 (*z*).

Treatise, p. 1223 and n. (*s*). Competent to dispose.

Similar provision is made in case of sales and mortgages before the 28th April, 1925, by the Finance Act, 1925 (15 & 16 Geo. 5, c. 36), s. 22, by reason of the increase in the rates of estate duty under that Act.

Treatise, p. 1227 and n. (*o*). "11. Where interest in expectancy sold or mortgaged before 2nd August, 1894."

The reference in sect. 22 (1) (i) of the Finance Act, 1894, to the Settled Land Act, 1882, must be replaced by a reference to the Settled Land Act, 1925 (*z*).

Treatise, p. 1230 and n. (*i*). "Settled property."

(*s*) S. L. Act, s. 119 and Fifth Schedule.
(*t*) See above, p. 796.
(*v*) See above, p. 657.
(*w*) Above, p. 17.
(*x*) Above, p. 166.
(*y*) Above, p. 137.
(*z*) See Interpretation Act, 1889, s. 38, above, p. 11.

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Treatise, pp. 1233, 1234 and n. (*c*). "Rate of estate duty."

In the case of persons dying after the commencement (*a*) of the Finance Act, 1925, the scale set out in the Fourth Schedule to that Act is substituted for the scale set out in the Third Schedule to the Finance Act, 1919, as the scale of rates of estate duty.

Treatise, p. 1233. "Persons accountable for estate duty."

As we have seen (*b*), some changes are made in regard to the persons primarily accountable for death duties payable in respect of land.

Treatise, p. 1236 and n. (*p*). "Estate duty on real property."

Special provision is now made for cases where a charge for death duties is overreached by the conveyance of a legal estate; the liability being transferred to the party conveying and to the proceeds of sale, and the unpaid duty becoming immediately payable with interest at the rate of £4 per cent. per annum from the date of the conveyance, subject to recoupment in certain cases (*c*).

Treatise, p. 1236 and n. (*r*). "Charge of estate duty."

Legal estates include land tax, tithe rentcharge, "and any other similar charge on land which is not created by an instrument" (*d*). Probably the charge on land for estate duty in favour of the Crown is a "similar charge" of this kind, and, accordingly, a legal estate in the Crown.

Treatise, p. 1236 and n. (*t*). "Power to raise the money."

This power to raise the duty, interest and costs is expressly conferred on a personal representative or other person made primarily accountable for any death duties charged on land (*e*).

Treatise, pp. 1236, 1237. "Charge in favour of limited owner paying the estate duty."

An equitable charge acquired by a "tenant for life" (*f*) or "statutory owner" (*g*) under the Finance Act, 1894, or any other statute, by reason of the discharge by him of any "death duties" (*h*) or other liabilities, and to which special priority is given by the statute, is "a limited owner's charge," and, if created after the commencement of the Land Charges Act, or

(*a*) Namely, on or after the 28th May, 1925, the date of the passing of the Act, no other date for commencement being prescribed. See 33 Geo. 3, c. 13, and *Tomlinson* v. *Bullock*, 4 Q. B. D. 230.
(*b*) Above, p. 792.
(*c*) L. P. Act, s. 17 (2), (3), above, p. 794; L. R. Act, s. 73 (5), (6).
(*d*) See L. P. Act, s. 1 (2) (d), above, p. 98. For the meaning of "instrument," see Table of Definitions, above, Part I., Chapter VII.
(*e*) See L. P. Act, s. 16 (3), above, p. 793; L. R. Act, s. 73 (10).
(*f*) Above, Part IV., Chapter II.
(*g*) *Ib.*, Chapter I. (*h*) Above, p. 792.

created before and assigned after such commencement, may be registered as a land charge of Class C (*i*); and will be void as against a purchaser of the land charged therewith or of any interest in such land, unless registered in the appropriate register before the completion of the purchase (*k*). But a limited owner's charge, although registered, is overreached by a disposition under the Settled Land Act (*l*). Where the land affected is registered, registration of a land charge (other than a local land charge) can be effected only by registering under the Registration Act a notice, caution, or other prescribed entry (*m*).

Registered land.

Provision is now made that the Inland Revenue Commissioners, on being satisfied that a personal representative or other person accountable (*n*) has paid or commuted, or will pay or commute all death duties for which he is accountable in respect of the land or any part thereof, shall, if required, give him a certificate to that effect (*o*).

Treatise, p. 1237. "Certificate of discharge from estate duty."

The Settled Estates Act, 1877, and the Settled Land Acts, 1882 to 1890, being repealed (*p*), settled land can now only be sold by the tenant for life or statutory owner under the powers conferred by the Settled Land Act (*q*). The provisions for the protection of purchasers of settled land against claims for death duties, and for charging the duties on the proceeds of sale, have already been referred to (*r*).

Treatise, p. 1240. "Estate duty on sale of lands under power."

In the case of deaths occurring after the commencement of the Administration Act, the provisions of that Act, and, in particular, of Part I. of that Act (*s*), supersede the provisions of Part I. of the Land Transfer Act, 1897. The Administration Act does not alter any death duty payable in respect of real estate or the incidence of any death duties (*t*); and

Treatise, pp. 1241 to 1243 and nn. (*q*) and (*z*). "Estate duty not charged on property passing to executor, as such."

L. T. Act, 1897, Part I.

(*i*) L. C. Act, s. 10 (1), Class C (ii), above, p. 407.
(*k*) *Ib.*, ss. 13 (2), 14 (2), above, pp. 406, 407.
(*l*) S. L. Act, s. 72 (3), above, p. 327.
(*m*) L. R. Act, s. 59 (2), above, p. 504.
(*n*) See above, p. 792.
(*o*) L. P. Act, s. 16 (7), above, p. 793. As to registered land, see L. R. Act, s. 73 (7), (8), (9), above, p. 471.
(*p*) S. L. Act, s. 119 and Fifth Schedule.
(*q*) Above, Part IV., Chapter V.; and see S. L. Act, ss. 108, 109, above, pp. 269, 270.
(*r*) Above, p. 796.
(*s*) Above, Part VII., Chapter II.
(*t*) A. E. Act, s. 53 (3), above, p. 445, n. (*v*).

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nothing in Part I. of the Property Act operates to impose a charge for death duties on leasehold land (*u*).

As we have seen (*v*), a personal representative is accountable for all death duties which may become leviable or payable on the death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise. The provisions for the protection of purchasers of land against claims for death duties and for charging the duties on the proceeds of sale have already been referred to (*w*). Land as to which a person dies intestate after the commencement of the Administration Act becomes subject to a trust for sale (*x*), and the interests of the beneficiaries attach to "the residuary estate of the intestate" (*y*), unless by virtue of an appropriation and assent (*z*), a beneficiary should become entitled to land of the intestate *in specie*.

Treatise, p. 1243. "Lands settled by deed on trust for sale."

Where land is held upon trust for sale either by virtue of some statute (*a*), or by virtue of a disposition on trust for sale (*b*), a purchaser of the legal estate from the trustees for sale is not concerned with the trusts affecting the proceeds of sale, even if he have notice of them (*c*); and the trustees for sale, as being the "estate owners," are accountable for all death duties which become leviable or payable in respect of their estate in the land or any interest therein capable of being overreached by their conveyance (*d*). The purchaser, however, should search. If he finds that a charge in respect of death duties is not registered as a land charge (*e*), he will take free therefrom, unless the charge attached before the commencement of the Property Act, and he had notice of the facts giving rise to the charge (*f*). If he finds that a charge in respect of death duties *is* registered as a land charge, he can require that the registration be cancelled free of expense to him (*g*).

(*u*) L. P. Act, s. 16 (6), above, p. 793.
(*v*) Above, p. 792. (*w*) Above, p. 793.
(*x*) A. E. Act, s. 33 (1), above, p. 441.
(*y*) *Ib.*, sub-s. (4).
(*z*) See A. E. Act, ss. 36, 41, above, Part IX., Section VII.
(*a*) See above, Part III., Chapter V.
(*b*) *Ib.*, Chapter VII.
(*c*) L. P. Act, s. 27 (1), above, p. 170.
(*d*) *Ib.*, s. 16 (2), above, p. 792.
(*e*) L. C. Act, s. 10 (1), Class D (i), above, p. 412.
(*f*) L. P. Act, s. 16 (1), above, p. 792.
(*g*) *Ib.*, s. 43 (1), above, p. 142.

The provisions of the Property Act and Registration Act, set out or referred to at the commencement of this section, leave unaffected the ultimate liability to duty of the persons beneficially entitled in proportion to their respective interests (*h*).

Treatise, p. 1247. "Estate duty how borne as between those beneficially entitled."

An estate in remainder or reversion takes effect as an "equitable interest" (*i*); and, if it pass on death, the "tenant for life" or "statutory owner," as being the "estate owner" (*j*), will be primarily accountable for the death duties payable on the passing of such interest, as being an interest capable of being overreached by his conveyance (*k*).

Treatise, p. 1249. "Where the property passing on death is not the whole estate or interest."

A certificate given by the Commissioners of Inland Revenue under sect. 16 (7) (*l*) of the Property Act discharges from any further claim for duty the land to which the certificate extends, and the production of such certificate to the "land registrar" (*m*) or other proper officer is a sufficient authority to enable him to cancel any land charge registered in respect of the duty so far as it affects the land to which the certificate extends. On a sale of the land to which such a certificate relates, the certificate should be abstracted and produced, unless the death which gave rise to the claim for the duty is earlier in date than the commencement of the title to be shown.

Treatise, p. 1249. "Certificate of discharge should be required."

A limited owner's charge is described in the Land Charges Act as an "equitable charge." The protection afforded to a purchaser against an unregistered charge of this kind has already been considered (*n*), and, as we have seen (*o*), such a charge, though registered, will be overreached by a disposition under the Settled Land Act.

Treatise, p. 1250. "Charge where duty paid by person having a limited interest."

Sect. 3 (6) of the Conveyancing Act, 1881, is repealed (*p*) and re-enacted, with some amendments, by sect. 45 (4) of the Property Act (*q*). Where a charge for death duties is registered as a land charge (*r*), the expense of procuring the registration to be cancelled must be borne by the vendor (*s*).

Treatise, p. 1250 and n. (*f*). "Expense of procuring certificate of discharge of estate duty."

(*h*) L. P. Act, s. 16 (5); L. R. Act, s. 73 (11), above, p. 793.
(*i*) L. P. Act, s. 1, above, p. 97.
(*j*) See above, Part IV., Chapter I.
(*k*) L. P. Act, s. 16 (2), above, p. 792. (*l*) Above, p. 793.
(*m*) See Table of Definitions, above, Part I., Chapter VII.
(*n*) Above, Part VI., Chapter VI., pp. 406, 407.
(*o*) S. L. Act, s. 72 (3), above, p. 327.
(*p*) Above, p. 17. (*q*) Above, p. 137.
(*r*) See above, p. 412. (*s*) L. P. Act, s. 43 (1), above, p. 142.

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